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No. 1883

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**UNITED STATES CIRCUIT COURT OF APPEALS**  
FOR THE NINTH CIRCUIT.

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**TRANSCRIPT OF RECORD.**

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THE UNITED STATES OF AMERICA (Complainant),  
Appellant,

vs.

THE BARBER LUMBER COMPANY (a Corporation),  
(Defendant), Appellee.

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**VOLUME XI.**

(Pages 4001 to 4400, Inclusive.)

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Upon Appeal from the United States Circuit Court  
for the District of Idaho, Central  
Division.

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**FILED**

SEP 19 1910



Abollant.

Recd of A. V. Ainsworth  
Amount of 637 752





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(Deposition of L. G. Chapman.)

Q. And how about the straight marks or dots on page 30, township 7 north of range 7 east, do you know who put them in there?

A. No, I don't.

Q. Then you don't know what they mean, other than a system of checking that you had at that time, which was uniform, as I understand?

A. That is all.

Q. As a matter of fact, you didn't know whether you put the red check marks on page 7, 6-4, or not, do you?

A. The red straight marks?

Q. Yes. A. No, I don't.

Q. And you haven't anything to base your belief upon that you did put them there, have you?

A. No; other than I usually did that part of the work.

Q. Now, I find on page 9 some heavy black dots, look like a period, and also some straight marks with a blue lead pencil. Did you put them in there?

A. No.

Q. What do those marks mean to you?

A. Nothing at all.

Q. You don't know what they are in there for?

A. If you will notice, there is no heading to the page.

Q. Look at page 29, township north, range 7 east, and you will see some straight marks there in red ink. Do you know who put them in there?

A. No, I don't.

Q. How long before Hoseley left the employ of the company did you purchase his timber ticket?

(Deposition of L. G. Chapman.)

A. I don't remember, but I think we bought his claim after he left us.

Q. And did you put the check marks in this book indicating Hoseley's claim?

A. The straight marks in here indicate his claim.

Q. I will ask you to find that.

A. The red marks in section 28, plat of township 6 north, 8 east, on page 40, shows his claim.

Q. They are in section 28?

A. Yes.

Q. Do you remember when he entered his claim?

A. He entered his claim when he was out here first.

Q. That was in August, 1903, I think he testified.

A. I think so, about that time.

Q. Some time before he came in September. And then those marks could have been put in there prior to September, 1903, as indicating that an entry could have been made on that land? Is that correct?

A. They could have been, if anyone had information as to the entry.

Q. Do you know whether those marks in section 28, township 6 north of range 8 east, were made by you or Mr. Moon, or haven't you anyway of telling?

A. I am satisfied in my own mind that they were made here, by myself, or by Mr. Cobb.

Q. But you have no independent recollection of it?

A. No, I know that they are not Mr. Moon's marks.

Q. Mr. Moon made the other marks, didn't he?

(Deposition of L. G. Chapman.)

A. Yes; I know his check marks.

Q. You said that you purchased John I. Wells' claim, did you? A. Yes.

Q. Did you purchase the claim of Mrs. Jennie Wells, the wife of Mr. John I. Wells?

A. No, not that I remember of.

Q. Did you purchase the claim of Mr. Patrick Downs? A. No.

Mr. BUNDY.—Do you mean you didn't, or the company didn't? A. I mean that I didn't.

Mr. KEIGWIN.—Q. Do you know whether the company did or not?

A. Yes, I know the company did.

Mr. BUNDY.—Before he came here?

Mr. GORDON.—Now, I understood you to say that as soon as the company, or the officers of the company, became aware that an entry had been made, or, as you stated, the land had been segregated, that it was the custom of the company, if they had in view the purchase of that land, to indicate that entry had been made by a red mark in this book.

A. No.

Q. Well, in some book.

A. I don't know whether it was a red mark; we always indicated in some form the initial entry of every timber and stone claim that we could find an advertisement for.

Q. And that was indicated by a straight mark?

A. That was indicated usually by a straight mark.

(Deposition of L. G. Chapman.)

Q. And when you acquired title to that, you continued that straight into a check mark?

A. Yes.

Q. When did you consider that you had title—when you got a deed?

A. When we took a deed from the entryman.

Q. Or when somebody had taken title for you?

A. Yes.

Q. In trust for the company?                      A. Yes.

Redirect Examination.

(By Mr. BUNDY.)

Q. Mr. Chapman, you used the word “entry” that you made a check mark on some book when the entry was made. Now, when did you make that mark? Where did you find out, what was your means of determining when you made the first mark to indicate that the lands were segregated?

A. We went through, each week, the newspapers publishing the notices given from the land office, for a time, cut them out and kept them on file, and made such notations from them as would give us the information as to the time of entry and by whom entered.

Q. Prior to coming out here you were at the Stanley plant of the Northwestern Lumber Company for a good many years, were you not?

A. Yes.

Q. The Northwestern Lumber Company owns a good many thousand acres of timber and other lands in that vicinity?                      A. Yes.

(Deposition of L. G. Chapman.)

Q. And had a good many plats of their holdings under your management and control?

A. Yes.

Q. Are you very familiar with the check marks of S. G. Moon? A. Very.

Q. And of J. T. Barber? A. Yes.

Q. You have seen them for years, and a great many thousand of them, haven't you?

A. Yes, twenty years, and a good many thousand.

Q. Is there anything characteristic about a check mark that you cannot determine—

A. I think I could recognize their check marks.

Q. I will ask you as to whether or not the straight marks on 6-4, page 7 of this book, plat book, are in the handwriting of either J. T. Barber or S. G. Moon? A. No, they are not.

Mr. BUNDY.—Now, gentlemen, I want to put on record a demand that you produce at Eau Claire this exhibit No. 141A, for the inspection of Mr. Barber and Mr. Moon, when testifying.

Mr. GORDON.—I will suggest that these exhibits are on file here, and there is an order of the Court that we can take them. I don't see why you should make it incumbent upon us to take that book there.

Mr. BUNDY.—You already have an order to take it. It is your exhibit and I would rather you would take it and produce it there; it is your exhibit.

Mr. GORDON.—All right.

(Witness excused.)



**[Deposition of Patrick H. Downs, on Behalf of the Defendants.]**

PATRICK H. DOWNS, produced as a witness on behalf of defendants, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. BUNDY.)

Q. Mr. Downs, you are the Patrick H. Downs that is mentioned as one of the defendants in this case, I believe? A. I believe so.

Q. And you live in the city of Boise?

A. Yes, sir.

Q. And have lived here for how long, Mr. Downs?

A. I have lived here since August, 1901.

Q. Prior to August, 1901, where did you live?

A. Minneapolis.

Q. And for how long had you lived at Minneapolis?

A. I don't know—somewhere between twenty-eight and thirty years.

Q. And what was your business while you resided at Minneapolis, generally speaking?

A. Well, I did a little work in the lumber business, cruised some, worked generally, logging camps.

Q. You came to Boise directly from Minneapolis?

A. Yes, sir.

Q. State the circumstances of your coming out here, and why you came.

A. Well, it was through an advertisement in one of the Minneapolis papers. There was a party



(Deposition of Patrick H. Downs.)

named Paris & Manning was locating timber lands in Idaho, so I went down to their office and interviewed them. They told me the price for locating was \$135.

Q. And what did that include?

A. That included our transportation from Minneapolis to the timber, and from the timber back to Boise.

Q. Did you employ the firm of Paris & Manning under that arrangement to send you out here?

A. Yes, I paid them my \$135, and took a receipt.

Q. And came here on their transportation?

A. Yes.

Q. Did anyone come with you?

A. Yes, Mr. Snow came with me.

Q. Was there anyone else in the party?

A. There were two women.

Q. Do you remember their names?

A. I remember one, Miss Julia Anderson.

Q. Do you recall the other one?

A. I don't remember the other's name.

Q. On your arrival at Boise was one of the firm here?

A. Mr. Manning was here.

Q. State what he did with reference to locating you?

A. He got a rig, paid for it, and took us to the timber.

Q. Where was that timber?

A. In the Boise Basin.

Q. Who was in the party that went up?

A. Mr. Snow, Mr. Manning, and a lady friend of Mr. Manning's, and these two women that came with

(Deposition of Patrick H. Downs.)

us, and myself.

Q. Did he locate you on a claim?

A. No. He showed us the timber there, and he didn't seem to have any of it cruised, and I told him I could find a claim myself, so we started out.

Q. Did you select one yourself? A. Yes.

Q. Filed on it? A. Yes.

Q. Finally made final proof? A. Yes.

Q. Subsequently sold it? A. Yes.

Q. Did Mr. Manning locate the other members of the party? A. No, we selected it for them.

Q. After viewing the land you came back here in the usual way and filed your papers?

A. Yes, sir.

Q. What did you do, then, before the day of final proof came, in the way of employment?

A. We went back up in the Basin and cruised awhile.

Q. You say we. Who do you refer to?

A. Mr. Snow and I.

Q. What was your purpose, and by whom, if any-one, were you employed to go back there?

A. Mr. Manning asked us to go back there. He said he didn't have any cruiser and couldn't cruise himself.

Q. So you went back at his suggestion?

A. Yes, sir.

Q. What lands did you cruise at that time?

A. We cruised lands in 7-5.

Q. That was in August, 1901?

A. Yes, August or September.

(Deposition of Patrick H. Downs.)

Q. What happened to Mr. Manning about that time?

A. He went back; didn't make a success of the locating business.

Q. Did he leave the country?

A. Then after he left Mr. Wells and I went into the locating business.

Q. Manning left, did he? A. Yes.

Q. About what time was it that Manning left?

A. I think he left in the early part of September.

Q. And, in the meantime, you had been cruising up there? A. Yes.

Q. Had he paid you anything for cruising?

A. No.

Q. What suggested to you, Mr. Downs, the advisability of going into the cruising business?

A. Well, first for Manning, or for myself, I see the whole country was vacant there; there was only a few claims that we filed on that came from Minneapolis, so I thought I would go into the locating business myself.

Q. Did you go to work systematically to cruise the country? A. Yes, sir.

Q. At that time did you know John I. Wells, when you first came out here?

A. I guess I met him on the first trip up there.

Q. But you didn't know him when you came?

A. No.

Q. Did you know Kincaid? A. No.

Q. Steunenbergh? A. No.

Q. Barber? A. No, sir.

(Deposition of Patrick H. Downs.)

Q. Mr. Moon? A. No, sir.

Q. Pritchard? A. No.

Q. Did you have any acquaintance here at all when you first came?

A. No, I was a stranger here.

Q. Where was John I. Wells at that time?

A. Living at Centerville.

Q. What business was he in at that time?

A. I think he was in the saloon business with his brother Hal.

Q. Did you get acquainted with him there?

A. Yes.

Q. State what, if any, first arrangements you had in connection with Mr. Wells, and how it came about?

A. I was cruising there awhile, and Mr. Wells, I guess had done some locating. He went into business on one side of the creek. So I met him down town one day, that is, in Centerville, and I asked him, "What's the matter with him and I joining here, charging a fee and split the fee, each to make half of the fee." He said he didn't know whether we would make a success of it or not. He said he was well acquainted here and that he would try.

Q. So you started?

A. Yes, I had considerable country cruised then. I said I have lots of claims here.

Q. And Mr. Wells then came down to Boise?

A. Yes, sir.

Q. And looked after the business at this end?

A. Yes, sir.

(Deposition of Patrick H. Downs.)

Q. While you looked after the business there?

A. Yes, I did the cruising.

Q. Your part of the business consisted of what?

A. Cruising the land and showing it to people.

Q. What was Mr. Wells' business?

A. He was sending the people to me.

Q. What made it necessary to have someone here to send people up in squads or together?

A. Well, we figured that it would make a better success to have two in the business, one at each end of the line.

Q. What did Mr. Wells do in town here with reference to getting up parties, and why was it necessary to have them *to* up in parties?

A. Well, we were charging only a certain fee, and they paid their own expenses. So then by sending them in parties, you know, they divided up the cost of the livery rig and the likes of that and it made it cheap on them.

Q. And how about witnesses?

A. That helped too. Being together they could be witnesses for each other.

Q. What charge did you make for locating people on a quarter section? A. \$25.

Q. During the fall of 1901 and the early winter of 1901 you and Mr. Wells together located a good many people in that country, did you not?

A. Yes, sir.

Q. State as to whether or not you practically exhausted all the desirable timber claims in the Basin except 6-4 during the fall of 1901?

(Deposition of Patrick H. Downs.)

A. No, we didn't. I worked there till Christmas; then the snow got too deep; we couldn't get people on the land.

Q. What did you do when the snow got too deep?

A. Came to Boise.

Q. And did nothing the rest of the winter, I suppose, in the way of cruising?

A. No, I stayed here until about the middle of February, 1902.

Q. When you went back again. Where did you commence operations the next year? A. 6-6.

Q. Did you cruise that? A. Yes.

Q. Had you cruised it before?

A. No, I started in there about the middle of February.

Q. When did you begin locating people in there?

A. We commenced locating people in there along in March, some time in March.

Q. How long did the timber last there before it was all located?

A. I worked there until, I think, it was the first of April, when I came back.

Q. The first of April?

A. Somewheres about the first of April, I think.

Q. At that time to what extent had you got it located up there, Mr. Downs?

A. I don't know how many claims I had located there then. I located some afterwards in the summer of 1902, over in the Basin, Centerville, Grimes Creek country.

Q. Well, after you had cruised the Basin country



(Deposition of Patrick H. Downs.)

that you have told us about, what did you next cruise, what section of the country?

A. I think I cruised the Crooked River country.

Q. What summer did you do that?

A. 1902, I think it was.

Q. When did you begin locating people in that section?

A. I think I started some time in August, 1902.

Q. At the time you cruised in Crooked River had the Basin country been pretty well located, except 6-4?

A. Yes.

Q. Only a few scattering claims left there?

A. Yes.

Q. Then you located people in the Crooked River country during the fall of 1902?

A. Yes.

Q. How late did you keep that up there that year?

A. I think I stayed until the early part of October.

Q. Where did you go then?

A. Came to Boise.

Q. How long before you again went to the woods to locate?

A. I don't think I went locating until the next spring, 1903.

Q. And then you located a few more people in the Crooked River country?

A. I located scattering claims.

Q. Then, at that time, had the Crooked River and Basin country been pretty well exhausted?

A. Yes, sir.

(Deposition of Patrick H. Downs.)

Q. When did you cruise 6-4, if at all?

A. I cruised 6-4 some time in 1903, I think it was.

Q. That was the last town you cruised?

A. Yes.

Q. When did you begin locating people on that?

A. In September, 1903.

Q. That was the day after the state selections were made?

A. Yes, sir.

Q. Mr. Downs, in cruising this land state as to whether or not you were acting for any person, Mr. Barber, Mr. Moon, Mr. Steunenbergh, Mr. Kinkaid, Mr. Wells, the Barber Lumber Company, or any other person?

A. No, sir.

Q. For whom were you acting?

A. Myself.

Q. In locating people upon these lands state as to whether or not you were acting for any person other than yourself?

A. Myself.

Q. Were you at any time employed, by salary or otherwise, by any of the defendants in this action, or any other person, for locating people, or cruising lands for location purposes?

A. I was not.

Q. Did you have any interest in the locations made by you other than your fee as a locator that you have told us about?

A. Just my fee.

Q. Did you have any interest, by way of salary, commission, or otherwise, in the sale of the land to any person?

A. No.

Q. Were you acting as the agent of any person buying or any person selling any of those lands?

A. I was not.



(Deposition of Patrick H. Downs.)

Q. Were you ever employed, by way of salary, commission, or otherwise, by the Barber Lumber Company, Mr. Barber, Mr. Moon, Mr. Steunenberg, Mr. Kinkaid, Mr. Wells, Mr. Pritchard, Mr. Palmer, Mr. Long, Mr. Rand, or anybody else for the purpose of locating people upon land? A. I was not.

Q. Now, I think you were employed on a few occasions, as shown by the books here, by Governor Steunenberg and by the Barber Lumber Company, perhaps, in making several trips up into the country, were you not? A. Yes, sir.

Q. I will ask you as to whether any of those trips, or any of those employments related to either cruising or locating entrymen under the Timber and Stone Act?

A. No, they just took me along as a guide to show them the country.

Q. Did you do any work with them in the matter of scrip? A. Yes.

Q. What work did you do for the company or for Governor Steunenberg, or any person named in the matter of scrip?

A. I selected some scattered forties up there and posted notices.

Q. You were paid for it by the job?

A. Yes, paid by the day.

Q. You never were in the regular employment of the company or Governor Steunenberg, or any of the parties I have mentioned? A. No, sir.

Q. How long did your arrangement with John I. Wells continue by which he was to look after the lo-

(Deposition of Patrick H. Downs.)

cating business at this end and you at the other end, and divide the fee?

A. I think it was up to the time of the 6-4 lands.

Q. That is, the arrangement continued through the original Basin entries of 1901 and 1902, and the Crooked River entries in the fall of 1902 and the spring of 1903?

A. Yes, sir.

Q. When you came to locate 6-4 you and Mr. Wells severed your partnership as locators?

A. Yes, sir.

Q. Did anyone have any interest at all in locating there other than yourself?

A. No.

Q. Did anyone get any part of the fee that you charged the people in 6-4?

A. No, I got all the fee in that.

Q. It appears here that Mr. John Kinkaid made out the filing papers for all the people that you located in 6-4, and who filed on that first day, including the original filing papers and the non-mineral affidavit, and so forth, and it also appears that Mr. Kinkaid assisted some in arranging parties to go up there. Will you state under what arrangement Mr. Kinkaid did that work?

A. I got Mr. Kinkaid to make out the filing papers so as to have them ready for the line-up. We heard some of it was going to be scripped, and any of it lost, that I didn't get, that I had cruised, I would lose my fee, my location fee.

Q. You were not paid your location fee in any case, were you, until their filing was accepted?

A. No, never; they wouldn't pay it.

(Deposition of Patrick H. Downs.)

Q. Did you pay Mr. Kinkaid for that work?

A. I paid him \$50.

Q. Mr. Kinkaid at that time was a lawyer, living here in the city?

A. Yes, sir.

Q. Maintained an office here?

A. Yes, sir.

Q. Did Mr. Kinkaid have any other interest in the lands you were locating other than you employed him to make the papers out?

A. Not that I know of.

Q. Did your \$25 fee which you charged these people include making out proper papers for them?

A. The reason I made the arrangement with Mr. Kinkaid I didn't want any mistake made in the papers in 6-4.

Q. Tell us why you were so fearful of a line-up there and danger of your locators not getting their lands, there in 6-4?

A. I had a slight intimation that there was a party going to scrip it.

Q. Now, you located these people in 6-4 practically all, I believe, within a few days before they filed?

A. Yes, sir.

Q. Do you remember the day of the week you started doing this?

A. No, I can't.

Q. It was the week before, wasn't it?

A. Yes, the week before I think.

Q. Was there any reason why you hadn't begun locating there before, and if so, what was it?

A. I heard the State had been selecting in there, and I didn't know what part they had selected.

Q. Did you finally find out, Mr. Downs, what

(Deposition of Patrick H. Downs.)

lands the State had selected?      A. I did, yes, sir.

Q. Did you employ anyone to find out for you?

A. Yes, sir.

Q. Who did you employ?      A. Mr. Kinkaid.

Q. Did you state as to whether or not you paid him for the work he performed for you?

A. I gave him \$20 for it.

Q. State as to whether or not he furnished you with a list of the lands which the State was going to select?

A. Yes, he got me the minutes of the State selection in 6-4.

Q. And when you read those you were prepared to begin?      A. I knew what was left.

Q. At that time state the conditions down here in Boise, Mr. Downs, with reference to the number of people that were looking for timber claims.

A. During that summer, while I was in town, I used to meet several on the street every day.

Q. Have many applications?

A. Yes, more applicants than I had timber.

Q. How was it with reference to the Crooked River country during the fall of 1902 as to the applications you had at that time?

A. Well, there was a great many applicants for Crooked River too.

Q. Did it require any solicitation or urging on your part to get people to locate?

A. No, sir, lots of them was up there in droves waiting for me.

Q. People came faster than you could tend to

(Deposition of Patrick H. Downs.)

them? A. Yes, sir.

Q. At the time you located these people on the lands, did you take them on to the lands they located on? A. Yes, sir.

Q. Did you show them the correct corners?

A. Yes, sir.

Q. Did you with any of them have any discussion at all with reference to what they were going to do with their claims? A. No, sir.

Q. Did you have any interest whatever, Mr. Downs, in what they did with their claims?

A. No, sir.

Q. Were you ever, in any manner, directly or indirectly, connected with the sale of the lands which were procured by the people you located upon them?

A. No, sir, it was immaterial to me whether they sold or not.

Q. Had you any interest in it other than your locator's fee you have testified to?

A. Just my locator's fee.

Q. There was a gentleman here by the name of Mr. Hobbs who testified that he didn't go onto his land. Will you tell us, Mr. Downs—

A. I took him as far as he would go, and told him I didn't want to locate him that way; I wanted him to see his land.

Q. He laid down on you?

A. He said he was tired out, didn't want to go any further.

Q. As long as he could see it across the valley he was ready to swear to it? A. Yes, sir.

(Deposition of Patrick H. Downs.)

Q. Do you recall any other instance of people who refused to go onto the land?

A. No, I don't.

Q. There was one entry made by a man by the name of Benjamin R. Allen. Do you remember who paid the location fee for him?

A. I think it was a man named Humphrey.

Q. What was the fee paid, location fee; what was the amount?      A. \$25.

Q. Was the price for locating always the same, Mr. Downs, from the time you began until the time you finished?

A. No, I raised the price after it got so they would stand for it.

Q. What price did you charge them?

A. First made it \$50.

Q. And some you got even more?

A. Oh, yes; I have got as high as \$125.

Q. What was the custom, Mr. Downs, with these people you located as to giving them their numbers, descriptions; how did you do that?

A. I used to write out each one's minutes of his claim, and the whole bunch that was with him, the whole bunch together, and put them in an envelope and give them to someone in the party I knew to take them down here and have Wells collect the fee for me.

Q. That would be sealed up, I suppose?

A. Yes.

Q. Mr. Wells then collected most of the locating fees at this end, while you and he were together?

A. Yes, sir.



(Deposition of Patrick H. Downs.)

Q. Who collected for you, if anyone, on the 6-4 lands?

A. I did myself; they paid me right after they filed in the land office.

Q. Do you recall the line-up on September 14?

A. Yes, sir.

Q. You were here at that time, were you not?

A. Yes, sir.

Q. And took some part in caring for the people in line in the matter of getting them lunches, and so forth?

A. Certainly, I was interested in getting my \$25.

Q. And if anything happened to these claims you lost your \$25?

A. Yes, sir.

Q. Did you stay with them all night and keep them there?

A. Yes, sir, you bet I did.

Q. When you came out here from Minnesota was it with the expectation of staying here?

A. Well, I hadn't my mind clearly made up to that, but I had my claim here and I just stayed here until the time of my proof, and the more I looked over the country the better I liked it, so I made up my mind to stay here.

Q. Were you ever at any time employed by Kinkaid, Wells, Steunenberg, the Barber Lumber Company, Mr. Chapman, Mr. Rand, Mr. Long, Mr. Palmer, or Mr. Pritchard, or any other person other than the entrymen or entrywomen you located, for the purpose of locating them or anyone else on timber lands in this section?

A. No, sir, I was not. I worked some on scrip—that was all.

(Deposition of Patrick H. Downs.)

Q. The question related to locations. Did you ever locate a single entryman or entrywoman at the request of any of the parties I have named?

A. No, sir, I did not.

Q. Did any of the parties I have named, or anyone else, ever suggest to you or tell you upon what lands you should locate any person or persons?

A. No, sir, I selected the claims myself.

Q. Were you employed by any of the persons I have named for the purpose of cruising those towns prior to locating people upon them?

A. No, sir, I was not.

Q. Who paid your expenses while you were cruising and getting the information necessary?

A. I did myself.

Q. Mr. Downs, when you got the information from Mr. Kinkaid as to what lands the State was going to select, did you tell anybody about it?

A. No, I checked off a plat of my own.

Q. But you didn't advertise the fact?

A. No, sir, I should say not.

Q. Did you know of a man by the name of Lake who had been doing some scrip work for the Barber Lumber Company, having cruised some there in 6-4?

A. I saw his tracks up there; met him once.

Q. What gave you the idea that they were going to scrip that?

A. The nearest of my recollection is that somebody that wanted a timber claim—I don't remember who it was—

Q. Told you about it?

A. Yes.



(Deposition of Patrick H. Downs.)

Cross-examination.

(By Mr. GORDON.)

Q. Mr. Downs, when you came from Minnesota here were you married? A. No, sir.

Q. You have married since you came?

A. I got married here in the west.

Q. Do you know how much money you brought with you when you came from Minnesota?

A. I think I had somewheres, something over \$400, between four and five hundred dollars.

Q. Wasn't that arrangement with Paris & Manning that you and the rest of the party would come out here and take up a timber claim, and convey it, when you got your final proof, to a company that they were going to form? A. No, sir.

Q. You didn't testify to that before the Grand Jury here, did you?

A. No, sir, I didn't. I don't think I did, because I couldn't.

Q. I will ask you whether or not, when you were before the Grand Jury in this room, in March, 1907, you didn't testify that you came out here with a party at the instance of Messrs. Paris & Manning, and that you were to pay \$137.50, and they would pay your railroad fare here and up to see the land and back to Boise? A. Yes, sir, \$135—not \$137.50.

Q. And that you were to convey that timber claim that you took up to a company that Paris & Manning had formed, or would form?

A. No, sir, I don't think I did, because I don't remember any such conversation as that between

(Deposition of Patrick H. Downs.)

Paris & Manning and I, or anybody else.

Q. You had been a timber cruiser in Minnesota, hadn't you?      A. I cruised some there, yes.

Q. And you were just carried away by an advertisement in a newspaper, and were willing to come clear across the country and pay \$135 to see a timber claim that you didn't know whether it was good or bad. Is that correct?

A. Yes, sir. We had an agreement though before we left that if the timber didn't suit us the money was to be refunded. Another thing, I wanted to come west anyhow; I had it in my mind to come west anyhow.

Q. With whom did you have an agreement?

A. With Mr. Paris.

Q. What is his name, do you know?

A. I couldn't tell you his initials. I did know at the time, but I couldn't tell you now.

Q. Is he still in business at St. Paul?

A. I never heard of him since the last—the last I seen him was when he received my \$135.

Q. How much money did he give you back?

A. I don't know—he give us back—he paid for our sleeping berth from Minneapolis to Omaha, and then I think he give us back enough to pay our sleeping berth from Omaha to Boise.

Q. And that is all?      A. Yes, I think so.

Q. And none of the party that came liked the timber?

A. There was three of us took claims.

Q. Who took you up into that country? I un-

(Deposition of Patrick H. Downs.)

derstood you to say that you didn't like the timber this man showed you, and you went off and located yourself.

A. No, he didn't have any claims run out. All he could show us was the notice posts there, and I said "That's good enough for me," and I went off and located myself.

Q. Did Snow take a timber claim?

A. Yes, sir.

Q. What did he do with his?

A. I don't know—probably sold it, I guess.

Q. Did he take a homestead at the same time?

A. I think he did, shortly afterwards, some-time afterwards.

Q. Do you know where that homestead was?

A. It was up not far from his timber claim. If I remember right, it was in the same section with my timber claim.

Q. And then you and Snow worked together for a time, didn't you?

A. Yes, sir, we located awhile.

Q. Were you and Snow partners for a time?

A. Yes, sir, I was cruising and he came down here.

Q. He came down and rustled the people out?

A. Yes, sir.

Q. Then did you and Wells and Snow for a time go into partnership?

A. Yes, it was a partnership for awhile, for a short time.

Q. And how long did Mr. Snow stay here the

(Deposition of Patrick H. Downs.)

first time he came?

A. Well, I think he stayed here until after he made proof on his timber claim. I don't know how long after that he stayed. I guess he stayed quite a long time.

Q. Do you remember that Mr. Snow went home because his mother was ill, or died?

A. I know he went east in the fall, that is all, 1901, sometime in October.

Q. Do you remember when he returned?

A. No, I don't.

Q. He stopped with you when he did return, didn't he?

A. No. He was here in Boise, I met him here that summer. I was very busy cruising. I wasn't in the city much at all.

Q. Did you write some letters to Mr. Snow after he left here and went back in the fall of 1902?

A. No, I don't remember that I did. I don't know whether I did or not.

Q. Never wrote him any letters telling him about the suspension that had been put on, but that there was an inspector that was out here that had been fixed up, and that now you could do some more locating?

A. I don't know whether I did write him any such letters at all.

Q. Would you say you didn't write them?

A. I don't think I did.

Q. Will you say you didn't?

A. To the best of my recollection, I didn't.

(Deposition of Patrick H. Downs.)

Q. Do you remember when Mr. Snow came back here that you told him he couldn't prove up on his homestead?

A. No, I didn't tell him—I don't believe I told him any such thing.

Q. Didn't you tell him that the company was going to get that, and that a contest would be filed against it?

A. I didn't tell him any such thing—no company.

Q. Who did you tell him was going to get it?

A. I didn't tell him anybody.

Q. You knew a contest was filed?

A. I don't know. He called on me once afterwards as a witness for final proof, or offering proof, on a homestead, but I told him I couldn't appear—I was too busy.

Q. And you didn't tell him that the company was going to get it anyhow? A. No, sir.

Q. The company did get it, didn't they?

A. I guess they did. I guess he lost his homestead or sold his relinquishment, or something.

Q. Who were the first persons that you located in 6-4?

A. Well, sir, now that is a pretty hard thing for me to recollect—the first ones or the last ones either.

Q. How long did you locate people in 6-4 before you said the State made its selection?

A. I was up there probably five or six days.

Q. And you located them all through that week?

A. Yes, sir.

Q. And it was at that time that you had an in-

(Deposition of Patrick H. Downs.)

timation from Mr. Lake, I understand, that somebody was going to scrip it?

A. No, I told you that I didn't remember who it was, but it was somebody to the best of my recollection that took a timber claim up there. I heard some way—I don't remember who it was now.

Q. You had cruised it sometime before that?

A. Yes, sir, I cruised the whole town.

Q. Do you remember on one occasion when Mr. Snow was here that you and he were walking down the street and you showed him Mrs. Burns and said "that is the lady that bilked those fellows out of \$400"?

A. I don't remember any such thing as that.

Q. You have seen that lady, haven't you?

A. Yes, I have seen her, but I don't remember any conversation like that at all.

Q. Will you say you didn't have any such conversation?

A. I don't think I did. I don't think I could have, because I don't think I knowed anything about it at the time Snow was here. Is that some of Snow's junk?

Q. Now, when was it that you went to John Kin-kaid to employ him to get the description of the land that the State was going to select?

A. Oh, it was probably two or three weeks before I went up there. I just met him on the street, and I told him I had cruised that whole town in there, and I heard the State was making its selection in there, and I said, "By ginger, I would like



(Deposition of Patrick H. Downs.)

to find out what the State was going to select in there.”

Q. And did he get it that day?

A. No. I don't remember; he got it shortly before I went up there to locate.

Q. And did you leave a copy of that with him?

A. No.

Q. What did he give you,—a plat or a description of it?

A. I think he gave me a description, I think it was a description.

Q. It wasn't a plat?

A. I don't remember exactly. I know I checked a plat of my own. I marked off what the State had, and I knew what was outside.

Q. And I understood you to say you paid him \$50 for that? A. No, I paid him \$20.

Q. And these people that you located in 6-4—did you tell them all to go to Kinkaid and have their papers made out by him?

A. I told any of them that couldn't make out their papers to go to him.

Q. And you told them there was a chance that it would be scripped, and they had better go and get in line? A. Yes, sir.

Q. Did you tell them all that?

A. I told enough so that they would tell the rest.

Q. Do you remember any of them that you told that?

A. No, I don't remember any particular one. I

(Deposition of Patrick H. Downs.)

know I told some of them. I know I was awfully busy up there getting over that land in five or six days.

Q. Now, could you point out on a plat the lands that you scripped for the Barber Lumber Company in 6-4?

A. I possibly could. I don't know whether others worked in there or not scripping. I know I worked in there for Mr. Steunenberg.

Q. If I show you the plat can you point out any you scripped there?      A. Possibly I could.

Q. Do you know how many pieces you scripped in 6-4?

A. No, I don't. I scripped some in 6-4, some in 7-4, some in 7-5, and some in 7-8.

Q. Now, how did you survey these sections, or quarter sections, and run them out? Did you make them in squares or did you make them in forties, and all sorts of shapes?

A. No, we picked out what vacant forties there was other than what was taken either by the State or these people that took up timber claims.

Q. I mean this: The sections and quarter sections are in squares?      A. Yes, sir.

Q. And in some of the locations that you made you located persons on pieces of land that were not in squares, but in different shapes.

A. Yes, I selected the corners the way the timber grew on the land. I didn't want to select land for an applicant that didn't have any timber on it.

Q. Didn't you make some of those selections for



(Deposition of Patrick H. Downs.)

persons, and segregate forties, and the forties that were segregated had a good deal more timber on that the ones you located the people on?

A. No, I picked out all the best timber for my applicants. I wanted them to be pleased when they seen their claims.

Q. I will ask you whether or not you didn't have an agreement with Mr. James T. Barber to the effect that he would give you \$5 for every forty that you segregated and isolated?

A. No, sir, I did not. I don't know whether Mr. Barber knew anything about me then or not.

Q. Can you look at that plat in 6-4, and point out the pieces that you located scrip on? (Hands witness paper.)

A. I think all them red ones there are the ones I selected.

Q. Can you describe them?

A. Northwest quarter of the southeast quarter of section 27; that is the southeast quarter of the southeast quarter of section 30.

Q. Is that all in 6-4 that you scripped?

A. I think it is.

Q. Is that scrip (indicating) and that scrip (indicating)? A. There? (Indicating.)

Q. Yes.

A. No, I don't think it was. That is timber and stone.

Q. Did you scrip this in there (indicating)?

A. I don't remember. I couldn't tell you. That was long ago, after I got my pay for it; I had no rea-

(Deposition of Patrick H. Downs.)

son to; I haven't any recollection of that scrip business.

Q. I understood you to say that Kinkaid got you the minutes of the State selection.

A. Yes, sir, that is what I asked him to get.

Q. What do I understand you to mean by he got the minutes?

A. What we call the minutes, the legal subdivisions of the quarter sections—the legal subdivisions or the forties, or hundred and twenties, or hundred and sixties.

Q. Did you tell any of the people that located in 6-4 to go to the land office and line up?

A. I told some of them; I told enough of them, and I said to tell the rest of them that they are liable to lose out if they don't get into line.

Q. Were you down here Saturday night, or did you get back Sunday?

A. I think it was the day before the opening.

Q. That was Sunday then.

A. I think so; I don't remember the day of the week.

Q. Now, who was with this man Hobbs the day you located him?      A. I think that—

Q. A man by the name of Granger?

A. No, I think it was Sam Vance, and a fellow named Allen.

Q. Benjamin Allen?

A. I don't remember his first name.

Q. Did any of them go to the land that day?

A. Sam Vance said he had been on this land, and

(Deposition of Patrick H. Downs.)

I said these other two have got to go. I said, "I don't want you to go down and testify in the land office that I didn't show you your land."

Q. They didn't go on the land? A. No.

Q. And you gave them the numbers?

A. They asked me for the numbers, and I gave them to them.

Q. And all of these people you located—you weren't afraid that any of them would beat you out of your location fee after you gave them the numbers? A. This in 6-4?

Q. Yes.

A. No, sir, I was right here, and I collected when they filed.

Q. All of them?

A. Yes, sir, I think all of them paid me in 6-4 either in the land office or down on the street after they got down out of the old land office in the Sonna Building.

Q. Did Mr. Coleman pay you there, or did you go to the blacksmith-shop and get that?

A. I think I went to the blacksmith-shop.

Q. Where did Mr. Harbaugh pay you?

A. I think he paid me in his assay office—he paid me part, and I think he done a little work for me in assaying. I think he done a little work for me on a coal prospect.

Q. Harbaugh, I mean,—not Hobbs.

A. As I remember—I think Harbaugh paid me there—I am not sure—I know he paid me.

Q. Where did Alexander T. Ellis pay you?

(Deposition of Patrick H. Downs.)

A. I think he was in the shop too with Coleman, if I remember. I know he paid me.

Q. I mean you let them get away from the land office, did you?

A. If I remember right, they said they were going over to the shop and I could call over there and they would pay me.

Q. Did Mr. Eagleson and his wife pay you there? George G. Eagleson.

A. I think they did.

Q. You wouldn't be sure?

A. I don't remember. I know they paid me. It was on the street probably, down in front, or up at the Capital State Bank, up around there.

Q. Mrs. Scully didn't pay you the day she filed, did she? A. I don't remember.

Q. Her daughter met you on the street and paid you some time after that, didn't she?

A. I think so, yes.

**[Deposition of John J. Blake, on Behalf of the Defendants.]**

JOHN J. BLAKE, produced as a witness on behalf of the defendants, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. BUNDY.)

Q. Mr. Blake, you are an attorney at law?

A. Yes.

Q. Residing at this city? A. Yes, sir.

Q. You have lived here how long?

(Deposition of John J. Blake.)

A. Fourteen years.

Q. Did you know Ex-Governor Steunenberg in his lifetime? A. Yes, sir.

Q. Did you do some law business for him during the year 1903, along about that time?

A. Yes, sir.

Q. Were you consulted by him and advised with him with reference to the location of scrip in township 6 north of range 4 east, in this Boise County?

A. Yes, sir.

Q. Do you recall the time of the line-up when these lands were entered by a lot of timber and stone entrymen, on September 14, 1903?

A. Yes, sir.

Q. How long prior to the date of that line-up on that date was it that you had this consultation and conversation with Governor Steunenberg with reference to scripping that land, that town?

A. To the best of my remembrance now, it was probably twenty or thirty days prior to that time, when I had the first interview with him regarding the matter. I had a number of interviews after that time and up to the Saturday prior to the time this land was opened to entry under the Timber and Stone Act.

Q. That would be up till the Saturday, the 12th, the day the State made its selection?

A. The 14th, Sunday, I think, Saturday at least.

Q. State what steps were taken and what was done by the Governor and you with reference to placing scrip on that town?

(Deposition of John J. Blake.)

A. Governor Steunenbergh told me—I had scripped some lands before that time under his direction, as I remember—at least I did scrip after that time some other lands under his direction. When he came to me regarding the lands in what is known as 6-4, he said that they would be opened for entry on the 14th of September, but, of course, under the law, the State had sixty days, as I remember it, in which to make their selections, if the State desired to make any selections.

Q. The State's right, sixty days, would commence July 15th.

A. Yes, the right of the State commencing on July 15th, expiring on the 13th, I believe, of September, 1903. He said he didn't know whether the State was going to select any lands or not, and on that account could not furnish me the description which he desired to have me file on under the lieu land law, and as I remember, the State didn't make its selections until very nearly the expiration of the sixty days. He said he desired very much to have all of the land which would be opened and desirable to be selected by scripping it, what was known as scripping it, and wanted to know if it could be done, and safely done, and I told him that there wouldn't be any difficulty about the scrip part of it, that the only difficulty would be that when the opening came, if we filed an application for lieu selection, that if anybody got to the land office before we did and filed on any part of the land included in our application, that our entire application would be rejected by the



(Deposition of John J. Blake.)

register and receiver, even though there was only a conflict of forty acres, and that would necessitate us either filing a waiver or making a new application. We discussed this question a great many times, myself and Governor Steunenberg, and at one time I suggested to him that it might be possible to get our application ready and mail it on Sunday, or the day before the opening, whatever day that was, to the land office officials, and they would receive it on the morning of the opening, and they might file it; then again we came to the conclusion that if people were lined up there, that the land officials would probably open the doors and receive them as they came, and that we would be unable to make our selection by mailing it to the land officials.

Q. Do you know in whose name the scrip you proposed to place was?

A. As I remember, Sumner G. Moon, or S. G. Moon, I think S. G. Moon.

Q. Do you recall of Governor Steunenberg taking the matter up with Mr. Moon at your suggestion in any way, and when?

A. Governor Steunenberg—when the scrip was turned over to me it was in the name of Sumner G. Moon, and, as I remember it, Mr. Moon hadn't given Governor Steunenberg power of attorney to act for him in laying the scrip, and I suggested that he get such power of attorney, and after I had made that suggestion to him I told him that it would probably be better to have the power executed in duplicate, for the reason that I desired to file one of them with



(Deposition of John J. Blake.)

the recorder of Boise County, and that if I did so it might not be returned to us in time to be used in making the application for the selection of the lieu lands, and Governor Steunenberg, acting upon that suggestion, either wrote or wired Mr. Moon, and, as I remember it, the powers of attorney came in duplicate.

Q. Was that scrip used in 6-4? I mean at that time? A. It was not at that time, no.

Q. Can you state why you were not able to use it?

A. It was not used simply because we came to the conclusion that it would be impossible for us to successfully make the selection, because of the fact that some entrymen would get in there and select some of the land we were going to apply for.

Q. In fact, there was a big lot of them standing there the morning it was opened?

A. Yes.

Cross-examination.

(By Mr. GORDON.)

Q. Did you have a list of the land that you desired to file scrip on?

A. As I stated, Governor Steunenberg told me that he was unable to furnish me with a list. That was the first thing I asked for, and he told me that he was unable to furnish me with that at that time, that the State had not made its selections, and he did not know what lands they would select.

Q. Did he give you a list of the lands you were to file scrip on?

(Deposition of John J. Blake.)

A. Not that I remember of, because, the State, as I remember it now, did not file until very nearly the expiration of the sixty days, and I don't remember whether he got a description of it or not. He stated however, that as soon as the State did make its selection that he would furnish me with a description of the lands, if any were desirable, that he wanted to have filed on.

Q. You didn't know the lands that the State was going to select then until they actually selected them? A. No.

Q. And you just knew that you were going to have so many acres of scrip or so many quarters of scrip, or what did you know you were going to have?

A. Of course, he had a certain amount of scrip, a certain number of acres; I don't remember now what the amount was, but he told me to be ready to act in the matter and have everything ready as far as possible, and, as I remember it now, I think I prepared forms of application and affidavit.

Q. When did you give up the idea of scripping 6-4?

A. I think not until perhaps two or three days before the opening.

Q. Whom did you tell that you were going to scrip?

A. I talked with nobody that I remember of now, except Governor Steunenberg. I think he was the only one that I remember of, except possibly there might have been a locator that I might have talked with, it might have been Mr. Lake, or a cruiser.

(Deposition of John J. Blake.)

Q. Who was the cruiser?

A. I wouldn't be sure about that, but if I talked with anybody it probably was Mr. Lake.

Q. Do you know who the cruiser was?

A. My remembrance is that it was Mr. Lake.

Q. And did you understand that Mr. Steunenberg wanted to scrip this in the interest of the Barber Lumber Company?

A. I didn't have any understanding regarding that, but I supposed that perhaps that was what he was doing.

Q. You, I understood you to say, were practicing law at that time?

A. Yes, sir.

Q. Were you practicing alone or were you in partnership with some one?

A. I was practicing alone.

Q. With whom did you have offices at that time?

A. I had offices with William E. Borah.

Q. And he was the attorney for the Barber Lumber Company at that time, was he not?

A. In 1903 I think perhaps he was. I wouldn't be sure about that.

Q. Did you talk with Mr. Borah about this matter?

A. Not that I know of. I never talked with him regarding scrip matters at all, because I took care of that entirely myself, and he never looked into the matter of filing scrip whatever.

Q. Did this contemplation of filing scrip exist between you and Governor Steunenberg for a month or more?

(Deposition of John J. Blake.)

A. I think it must have been, as I said the first time. To the best of my remembrance it might have been twenty or thirty days prior to the 13th of September, 1903.

Q. Did he pay you a fee for your services?

A. I was paid a fee for my services.

Q. Would you mind telling how much?

A. Well, for that particular matter, I wouldn't be able to say, because I scripped other lands afterwards, and what the total amount is that I received for that I wouldn't be able to tell without referring to—

Q. I mean, approximately, can you tell?

A. I think perhaps altogether it was three or five hundred dollars, although I wouldn't be sure.

Q. Did Mr. Steunenberg pay you or did the Barber Lumber Company?

A. Mr. Steunenberg paid me.

Q. Did he pay you it all at one time?

A. No.

Q. Do you know what length of time it ran over?

A. I imagine that must have extended over a year at least.

Q. Then he didn't pay you until some time in the middle of 1904? Is that correct?

A. No, I don't think so. He might have paid me before that. There was some matters I did after.

Q. Do you remember when the last scrip was placed by you for the Barber Lumber Company or for Mr. Steunenberg?

A. No, I do not now.

(Deposition of John J. Blake.)

Q. Would you know the land that you scripped if you should see it in a plat?

A. Well, no, I don't know as I would. In a good many instances I have copies of the applications I filed, or at least lead pencil notations as to the descriptions, but I have forgotten.

Q. You are not now the attorney for the Barber Lumber Company, are you?

A. Not at the present time, except in one or two old matters, I am not.

Q. Have you ever been the attorney for the Barber Lumber Company?

A. I have—one of the attorneys.

Q. Were you ever retained by them annually, at an annual fee, as attorney?

A. Why, my partner, Mr. Cavanah, and myself were retained, but are not at the present time.

Q. How long has it been since you were retained annually?

A. The time expired I think on the first of January this year.

Q. And how long prior to that time had you been employed as attorney for the Barber Lumber Company?

A. I think a year. I wouldn't be sure, only for one year.

Q. You said the scrip you were to locate was in the name of Sumner G. Moon?

A. I am satisfied it was.

Q. Was it Northern Pacific scrip?

A. I don't think that was. There was some

(Deposition of John J. Blake.)

Northern Pacific scrip; I intended filing that, but I think prior to that time—it might have been after.

Q. Do you know what amount of scrip you contemplated filing in 6-4?

A. I have forgotten now what the amount was, but there wasn't any definite amount fixed. It was to be in such amount as there was land open and available for filing scrip on.

Q. And all that you were to do was to make the application and fill in the description of the property that they wanted scripped—is that correct?

A. I prepared the application, the non-mineral affidavit, the notices, and I also gave written instructions to the cruiser as to the posting of the notices.

Q. Have you any letter-press copies of the instructions which you would give to the cruiser?

A. I don't think I have. I may have some of them.

Q. Do you know how many forties or quarter sections you gave to the cruiser to cruise?

A. All together?

Q. Yes.

A. No, I haven't any remembrance of that.

Q. I mean in 6-4?

A. No, I didn't give any instructions prior to this time, prior to that opening to a cruiser, because we didn't file any application.

Q. Where did you get the description of the piece of land that you wanted him to file a notice on?

A. I got that from Governor Steunenberg. He



(Deposition of John J. Blake.)

was furnishing me with that information.

Q. As I understand, you couldn't take a plat and point that out, could you?

A. I don't think I could, because I never carried in my memory the descriptions. Of course, we hadn't decided on any particular description prior to the opening because we didn't know, but we did file some scrip on that land there after that, on 6-4. Some data with reference to that I have.

Q. It never suggested itself to you that you could put a man in line on Friday or Saturday so that you could file all this scrip?

A. Yes, that was suggested.

Q. Why didn't you do it?

A. Well, as I stated, we didn't get this description of the State's filings.

Q. You could have got that Saturday afternoon, couldn't you?

A. We probably could. I don't know but what that was gotten, but I prepared no application, except a blank for the filling in of the descriptions.

Q. Then nobody could have known that you contemplated filing scrip without either Governor Steunenberg or Mr. Lake had told them, as I understand?

A. No, sir, I don't remember talking to anybody else. It certainly wasn't my policy to talk with anybody else regarding matters of that kind.

Q. It wouldn't have been likely that you would go out and tell somebody that you were going to file scrip when you thought somebody might get in



(Deposition of John J. Blake.)

ahead of you anyhow?

A. No, I don't think I would have done that.

(Witness excused.)

State of Idaho,

County of Ada,—ss.

I, John T. Morgan, Special Examiner appointed by the Court to take evidence in the city of Boise in the above-entitled action, do hereby certify that the witnesses named in the foregoing transcript, consisting of pages 3474 to 3542, inclusive, attended before me, and that each of such witnesses were duly sworn to testify to the truth, the whole truth, and nothing but the truth, and in response to oral interrogatories testified as more fully appears from the foregoing transcript, which transcript, together with the exhibits therein referred to, contains all of the evidence so taken before me on behalf of the defendants, and all of the stipulations made, and objections and other proceedings had and taken before me on the trial of said cause, while taking such evidence.

Dated June 19th, 1909.

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Special Examiner.

*In the Circuit Court of the United States for the  
District of Idaho.*

THE UNITED STATES OF AMERICA,

Complainant,

vs.

THE BARBER LUMBER COMPANY and  
Others,

Defendants.

Met pursuant to notice at Buffalo, New York, May  
7th, 1909.

Mr. Peyton Gordon, being present on behalf of the  
complainants, and Mr. Joseph G. Dudley present on  
behalf of the defendant, The Barber Lumber Com-  
pany.

It is stipulated by and between counsel for the re-  
spective parties that John J. Sly, a Notary Public,  
shall swear the witnesses with the same force and  
effect as though they were sworn by the commis-  
sioner appointed by the Court.

**[Deposition of Dr. John Watson, on Behalf of the  
Defendants.]**

Dr. JOHN WATSON, called on behalf of the de-  
fense, being duly sworn, testified as follows:

Direct Examination.

(By Mr. DUDLEY.)

Q. Dr. Watson, where do you reside?

A. Toronto, Canada.

Q. What is your house address?

A. 829 College Street.

(Deposition of Dr. John Watson.)

Q. How old are you? A. 48.

Q. What is your business or profession?

A. Practicing medicine.

Q. How long have you lived in Toronto?

A. For the last four years; almost five.

Q. During that time have you practiced your profession in Toronto? A. Yes.

Q. When were you admitted to the practice of medicine? A. 1891.

Q. Where were you educated?

A. Toronto University.

Q. And you are a graduate of that medical department? A. Yes, sir.

Q. When did you graduate? A. 1891.

Q. Have you practiced elsewhere than Toronto?

A. Yes; I was at Unionville, Ontario.

Q. For how long? A. 13 years.

Q. Engaged in the practice of medicine there?

A. Yes, sir.

Q. What has been your practice?

A. General medicine.

Q. General practice of medicine?

A. Yes, sir.

Q. Do you know Albert E. Palmer?

A. Yes.

Q. Where and when did you first meet him?

A. I met him at his house in June last year, 1908.

Q. What is his house number?

A. 179 Ossington Avenue.

Q. Toronto, Ontario? A. Yes, sir.

Q. Were you called to attend him?

(Deposition of Dr. John Watson.)

A. That was when I was called to attend him. I probably saw him before that in April when I was called to attend his wife.

Q. This was in June?

A. This was in June that I have definite knowledge of meeting him.

Q. When did you last see Mr. Palmer?

A. About the 15th of April, I think.

Q. 1909? A. 1909, yes.

Q. Where is Mr. Palmer now?

A. In the Homewood Sanitarium at Guelph.

Q. Guelph, Ontario? A. Yes, sir.

Q. That is a private sanitarium for the treatment of nervous diseases? A. Yes,

Q. They have an insane asylum in connection with it? A. Yes.

Q. Did you see Mr. Palmer there at Guelph?

A. Yes.

Q. Did you accompany him from the city of Toronto? A. Yes, I did.

Q. To Guelph? A. I did.

Q. For what purpose?

A. To be sure that he would be properly admitted and that there would be no doubt about his reaching his destination.

Q. Did you see him taken into the care of asylum people there? A. Yes.

Q. He was committed regularly to that sanitarium? A. Yes.

Q. And is he now there confined?

A. He was. To the best of my knowledge he is

(Deposition of Dr. John Watson.)

there; that is where I left him. I expect he is there.

Q. Well, you have heard since that he was there?

A. Yes, I just heard the other day.

Q. Is he confined under lock and key?

A. He was when I was there.

Q. State Mr. Palmer's condition when you were called to see him in June of last year.

A. In the order of sequence, you mean? It doesn't make any difference, I suppose, as long as you get the particulars. I was called to see him. He was dressed at the time and he was very much intoxicated pretty much every day, and there was apparently a little trouble between him and his family; he was a little quarrelsome and a little I suppose domineering and they asked me to go up and see him. That he was acting strange, and had been for some time and she didn't know what was going wrong with him. So I watched him and looked at him carefully. Of course the first that attracted my attention was the expression in his eyes, which I noticed was that peculiar expression which gave me a line at once that he was in an insane condition. Then next I noticed was his inability to talk—at least to express himself; his speech was a sort of stammer or as though his mouth was a little full. It was somewhat spasmodic. He would only express himself for a little bit, maybe for a sentence or two, and then he would have to stop and collect himself. He had also a point that we generally examine in connection with, what we call an exaggerated reflex, patella reflex. I am giving the symptoms, because

(Deposition of Dr. John Watson.)

the impression I got I followed out along that line. I saw by his actions that he was restless, he would not sit down any length of time; he would walk backwards in the room, very restless.

Q. What about his ability to read and write?

A. Well, I tested him on the writing, and he could not sign his own name.

Q. How about his reading?

A. Well, he didn't read at all. He said he couldn't read, couldn't understand. He said then that probably large head lines, the large type he could make out the letters, but beyond that he could not do anything. Of course he thought there was something wrong with his eyesight and he complained of having sensation on the left side of his head, made it somewhat general, over the neighborhood of the ear; he claimed that he was treated at one time by a physician for some trouble in his ear, he had it syringed and attended to and he thought if he would treat him along that line it would do him a lot of good. He thought his old trouble principally was in this neighborhood. He felt that his mind was not just what it should be, but he laid it on to this area, and due to his ear. He thought if that was treated he would be better.

Q. Was he under your care from that time on?

A. Yes. I might say that then he became careless in his habits; that is, he was filthy in his habits.

Mr. GORDON.—Before you proceed, I would like to have the record show an objection to all this testimony as to the condition of Mr. Palmer on the



(Deposition of Dr. John Watson.)

ground it is incompetent, irrelevant and immaterial.

A. (Continuing.) For instance, he would move his bowels wherever he was taken, on the floor or anywhere, and pass his urine in the same way.

Q. He has been under your care, has he, from that time down to April?

A. I attended him fairly regularly for two or three weeks until I made up my mind as to the condition; I tried to get him to take some medicine; I couldn't do that very well, because he wouldn't take it himself and he had nobody with him that I could trust or that would carry out my instructions in that respect. I then told his wife what I thought was the condition and I told her the quicker that he was removed to a place of restraint, might be to a hospital if they would take him, if not, to an asylum, because the longer he stayed there, likely the worse it would be for him, for his mental condition. Well, then his brother came over and I told his brother what I thought was the trouble, the condition, and what I advised them to do. So when I went away for my holidays I had made arrangement to get him to a hospital provided he was quiet and did not require very much care. The practitioner who took my work while I was away, had everything arranged; they even had a cab come to the house one day to take him over to the Western Hospital. They have a few rooms there in which they have doors that have no glass or anything in them, and I was going to have him put in there for a little while; but he refused to go, and he refused to go anywhere



(Deposition of Dr. John Watson.)

of his own accord, so that then I paid little or no attention to him after that, except when he would drop in occasionally, because unless he was confined where he had proper attention I did not think there was any use of my making visits and running a bill or any expense on him, so that for several months I saw him occasionally, but did not do anything in regard to treatment for him until shortly before he went away.

Q. Well, now, what did you do shortly before he went away?

A. Well, he became at last so troublesome that he would come down to my office probably as often as ten or fifteen times a day.

Q. How far was your office from his house?

A. Oh, about a hundred yards. He would go into the bank, as the bank cashier told me—

Mr. GORDON.—Do not tell that.

Q. You need not give that.

A. All right. My wife at last was getting a little alarmed; she was afraid that probably he might do something to her, and she told me that she wished I would make some arrangement; so I told his wife that she would have to do something; I said, "The best thing you can do is to commit him to the asylum." Well, she did not like to do that. Well, I said, "Get a neighbor then to do it. Do something. Have somebody do it." Well, she did not do that, and I had made up my mind that I would do it myself, although I did not want to. Just at that juncture, I got a letter from his brother asking

(Deposition of Dr. John Watson.)

me what I thought of Homewood Sanitarium for such a patient as Albert. I told him I thought it was a splendid place, probably just as good, maybe better, than the ordinary asylum, because it is more home-like and a beautiful location, and it is not classed as an asylum, people have a little more respect; doesn't sound as bad as an asylum. So when I got that letter I then thought I would try and manage without taking any steps myself until I got something definite from his brother. I wrote his brother immediately that I thought the institution was all that could be desired, and as soon as possible I got word from his brother stating if I thought so if it didn't go beyond a certain rate, to commit him, to have him placed there and to draw on him for his maintenance. So I was so anxious to have him placed in some place, that although his brother is a complete stranger to me, I put every confidence in him and I run the risk of at least taking him up and told them that I would at least see that he was paid for for a week until I could hear definitely from his brother as to the financial part of it. He talked a little bit about going and I thought probably when it came down to the act of going that he might refuse the same as he did to the hospital, and I told him, "Now, we are going to take you to Guelph," and he wanted to know who was committing him, his wife or brother.

Q. That isn't important. As a result of this, you yourself took him to Guelph? A. Yes.

Q. And did you have him examined by some

(Deposition of Dr. John Watson.)

other physician than yourself?

A. Oh, yes; they require the examination too, and two papers filled out.

Q. Two papers for commitments?

A. Yes, same as they do admitting to the provincial asylum.

Q. And you made out doctor's commitment papers, and who else, what other physician?

A. Dr. Page.

Q. What is his name?

A. Thomas J. Page.

Q. Who is Dr. Thomas Page; does he live in Toronto? A. Yes.

Q. A practicing physician? A. Yes.

Q. And he made an examination, did he, of him?

A. Yes. He was the doctor who saw him when I was away for the holidays last summer and visited him.

Q. And these papers were made out and you took Albert, did you, to Guelph? A. Yes.

Q. And saw him placed in confinement?

A. Yes.

Q. From your examination of Mr. Palmer while acting as his attending physician, what was his condition of mind, sane or insane?

A. Insane.

Q. And was he insane at the time that you first saw him in June of last year? A. Yes.

Q. What do you say with reference to whether there is or is not any prospects of his recovery?

A. I do not think there is any chance of his re-

(Deposition of Dr. John Watson.)

covery.

Q. What disease of the mind do you think he is suffering from?

A. A term called general paresis.

Q. Did you or did you not meet a Mr. P. J. Cosgrove, his uncle? A. Yes, I met him.

Q. Sometime this last year, 1908?

A. Yes, 1908.

Q. In Toronto? A. Yes.

Q. He was there to see Palmer?

A. Yes.

Q. And you talked with him in reference to Palmer, did you? A. Oh, yes.

Q. Saw him at his house, at Palmer's house?

A. Yes.

Q. What does Mr. Palmer's family consist of, how many children? A. Three.

Q. And a wife? A. Yes, sir.

Q. I think that is all. You may ask.

Cross-examination.

(By Mr. GORDON.)

Q. Doctor, I understood you to say you were engaged in the general practice of medicine?

A. Yes.

Q. You make no specialty, as I understand it?

A. No, not particularly.

Q. You are not a specialist in mental or nervous diseases, are you? A. No, not so-called.

Q. You are not an alienist or an expert on those diseases, are you?

A. Not according to the term, I suppose.

(Deposition of Dr. John Watson.)

Q. You have never testified in court as an expert on mental or nervous diseases, or in insanity cases, have you?      A. Yes, I testified once.

Q. As an expert?

A. As an expert—well, depends on what you call expert evidence. I was in court in connection with a patient I had, in connection with a will.

Q. Well, a layman can testify as to acts and as to such things, as to their opinion of whether people are insane or whether they think so. But did you qualify as an expert?      A. No.

Q. You say you subjected Mr. Palmer to one test to determine whether or not he was insane; that was the patella reflex?      A. Yes.

Q. That is the way you strike the knee and the foot will fly up, if you think the man is insane, and if you don't think he is insane, he has some control over it; is that it?

A. No. Well, it may or may not be. That may occur in organic trouble too.

Q. Well, then, from that did you conclude that he was insane?      A. Oh, no; oh, no.

Q. You say that he was continuously drinking intoxicants during the period that you saw him in June of last year?

A. Yes, he was drinking a good deal.

Q. And that he had some difficulty in talking?

A. Yes.

Q. Wouldn't that same defect in the speech occur in many instances of excessive alcoholism or drunkenness, as you call it, from which a man would

(Deposition of Dr. John Watson.)

naturally recover the next day or day or two afterwards when he ceased his excessive drinking?

A. No, I don't think so. This would be different than that.

Q. If I should show you a letter written by Mr. Palmer within the last month or six weeks that was very legible, the language expressive, and couched in a coherent and intelligent form, the context of the letter, being a request to one of his friends for a loan of \$200, would you change your opinion as to his sanity or insanity? A. No.

Q. Then Mr. Palmer's condition is such at the present time that you think he might be capable of writing an intelligent or coherent letter, or at times talking coherently and intelligibly? A. Yes.

Q. And you would think in doing that he would know what he was talking about?

A. Yes, he would know what he was talking about.

Q. In other words, at some of these times that you talked with him he understood what you were saying, even in the last one or two months?

A. Yes.

Q. And when you told him that you were going to take him away, and he wanted to know whether it was at the instance of his wife or his brother, you took that to mean that he did not want to be put away by his wife, but that if his brother was taking care of him he was perfectly willing to go; isn't that your idea of what he was intending?

A. Yes.



(Deposition of Dr. John Watson.)

Q. In other words, he and his wife had had some considerable difficulty and they did not get along very well together, and he felt that his brother was his main support and he would do practically what his brother told him to do; isn't that correct?

A. Well, he said that he would do that.

Q. He knew where he was taken?

A. Yes, he knew where he was taken.

Q. Now, did you give him any medicine at all?

A. Yes, I did at first for a while, but he didn't take very much.

Q. What did you give him that for; to cure him of the natural nervousness that would occur from excessive drink?

A. No, not particularly. I gave him a pill that they use largely over there in the Provincial Asylum.

Q. Was that strychnine and nux vomica?

A. Arsenic, quinine—

Q. And what else?

A. What is this other—particularly a nerve sedative; it slips my memory now.

Q. Asafetida? A. No.

Q. Nux vomica?

A. There was nux vomica and quinine—

Q. Digitalis?

A. No, that isn't it. I cannot think of it.

Q. Well, it was just a nerve tonic that you give to almost any person?

A. Yes. I have given to other patients, but not so often, not very often.

Q. I mean for a nervous break-down you give it



(Deposition of Dr. John Watson.)

to people? A. Yes, good for anyone.

Q. Not necessarily insane people, either?

A. No.

Q. Had you ever taken him to any sanitarium before?  
A. No.

Q. Had he ever been in a sanitarium before, to your knowledge?

A. Not to my knowledge.

Q. Did you treat him for alcoholism?

A. No.

Q. Did you stop him drinking alcohol or liquor?

A. I don't know that I did. I told him to quit it.

Q. What was he drinking; whisky?

A. I think so.

Q. Do you know how much of it he drank a day?

A. No.

Q. All he could get, I assume?

A. I don't know anything about that.

Q. Now, this sanitarium to which you did take Mr. Palmer, is that a private sanitarium?

A. Yes, it is private.

Q. And it isn't a sanitarium where they commit the criminal insane for that jurisdiction, is it?

A. No.

Q. Nor it isn't the asylum or the institution to which the authorities commit their insane, is it?

A. No.

Q. They have an asylum in that community where people who live in the community where Mr. Palmer did, who become insane and become violent,

(Deposition of Dr. John Watson.)

when the authorities commit them to an institution, and that is a different one from the one in which Mr. Palmer is; is that correct?      A. Yes.

Q. As a matter of fact, you could not have taken Mr. Palmer there and compelled him to have remained at that institution without he had expressed a desire to go, could you?

A. Which institution?

Q. The one at which he is now.

A. Oh, yes, I could take him.

Q. How could you have got him there?

A. Well, have him brought before a magistrate and commit him as a lunatic.

Q. But then the magistrate would have committed him to one of the institutions for that place, wouldn't they?

A. Well, I don't know as that would be—No, I do not know that that would be absolutely necessary, either, as long as he was committed to a place of safety. Of course, in a pauper case when there are no funds forthcoming, of course, he would have to go to the Provincial, but where they are able to pay and want something of a little more private nature, they do not object to their going there.

Q. What I am trying to find out is, whether or not as a matter of fact you can, without any formality of the law, take a person to this sanitarium at which Palmer is, and compel him to stay there?

A. No, you couldn't compel him to stay there without the formality of law.

Q. This is a pay sanitarium. They do not take

(Deposition of Dr. John Watson.)

people there without they pay their expenses?

A. No.

Q. And I understood his uncle or his brother was paying for his treatment there?

A. His brother, yes. Of course, that is why he went there. If I hadn't had that, of course, I would have put him in the Provincial.

Q. You mean you would have tried to put him there?

A. I would have had him committed, and that is where they would have put him, or else in the jail.

Q. Now, when he came to see you, did he show any signs of violence?

A. No, he didn't show any signs of violence.

Q. Didn't threaten you in any way?

A. Oh, no.

Q. Didn't talk threatening to you, did he?

A. Regarding myself, do you mean?

Q. Yes. A. No.

Q. Your wife became nervous just because he was a man—well, I won't ask that, because you do not know why your wife became nervous; but she did not want him to come there because he had come as you said so many times, and so she became exercised over that. Did he make any threats towards anybody else? A. No, not particularly.

Q. Did you see him at any time act violently towards anybody?

A. No. All I saw was when I would be in his house. I did not see him of course, raise his hand or do anything, but when his wife said anything that

(Deposition of Dr. John Watson.)

he didn't like, or something like that, of course he would get up and look cross and struck an attitude that it is hard to say what he might do.

Q. You don't know whether that attitude was justified even for an insane man?

A. Oh, no. I didn't see him show any signs beyond that.

Q. Did you see him perform these operations of the bowels or urinating on the floor yourself, or who told you of that? A. I was told of that.

Q. He did not do that before you? A. No.

Q. And isn't that a common occurrence for men who get exceedingly drunk to do such things as that?

A. Possibly. I don't know.

Q. You have known of men who would get drunk and go in a room and stay a week or so and relieve themselves right in the room and live in the filthy state, and after the drunk was over, lead decent, cleanly lives thereafter?

A. Well, no, I don't think I ever saw a case like that.

Q. Now, you have used the expression of committing to the institution; you mean that you took him there without any legal formality and that they agreed to accept him as a patient? A. Yes.

Q. There wasn't any necessity of putting him in the room and locking him in there, was there?

A. Yes, I think so.

Q. Well, what was the necessity; that he would go out and get drunk again?

A. No. Not that. But he was in such a state of

(Deposition of Dr. John Watson.)

mind that he wouldn't know what he might do. Might wander away or something like that; something happen him, or something of that nature; that is the reason.

Q. Well, did they put him in a room and lock the door?

A. Yes, they locked the door. They have a door from the main entrance into a corridor in which there are, I think, four or five cells down each side, I mean rooms, nicely fixed up.

Q. Like a hospital?

A. Yes. Then off of that was the great big balcony with iron bars up, and then there was on the other side right at the end was the balcony to this side of it, and there was a room where they played pool, had pool-tables and things like that; general sitting room.

Q. Was he allowed access to the pool room?

A. Yes, he was playing pool when I left.

Q. Playing by himself?

A. Oh, no; he was playing with another party.

Q. Shoot a pretty good game?

A. Yes, he was doing very well.

Q. Had one of the other inmates in there playing with him?

A. I rather expected it was an inmate, yes.

Q. And there were others in the same room with him?

A. Yes.

Q. How many?

A. Well, there was four others that I noticed.

Q. You don't know whether they locked the door

(Deposition of Dr. John Watson.)

to keep him in, or the others?

A. Well, I know what the nurse told me. I heard the instructions from the doctor. I asked them about that particularly; I wanted to know what privileges he would have. They said, "He is not let out of this room except the nurse is with him." It was a male nurse. And they told me, "We keep him here under this lock and key until he is here long enough, until we are satisfied as to his condition, whether we will allow him any other privileges or not." There were two in there; one fellow was wandering around talking away to himself in a most decidedly melancholy way. He was a young looking fellow.

Q. You bade him goodbye when you left him?

A. Yes, sir.

Q. And he bade you goodbye and wished you good luck?

A. Yes.

Q. Shook hands with you?

A. Yes.

Q. Told you to come and see him?

A. Yes.

Q. And you told him you would come?

A. Yes.

#### Redirect Examination.

(By Mr. DUDLEY.)

Q. Doctor, what do you say about his drinking, do you know whether or not he stopped drinking?

A. My own opinion was that he had stopped entirely.

Q. Did this condition still continue—incoherent speech and inability to write—for some time?

A. Well, the inability to write had improved a



(Deposition of Dr. John Watson.)

little bit from what it was first.

Q. So that he was able to write letters?

A. Oh, yes.

Q. Did he write a good many letters?

A. He was all the time writing, wanting to write.

Q. Did he speak more coherently during the latter part of 1908 than he did in June?

A. Yes, better.

Q. Is Dr. Page connected in any way with any hospital in Toronto? A. Yes.

Q. Which one? A. Western Hospital.

Q. Do you know whether he has had any experience in mental diseases?

A. Well, about the same I suppose as the ordinary general practitioner. I was in the country and then I generally committed on the average of one a year.

Mr. GORDON.—They were people anybody could tell was crazy?

The WITNESS.—No, I don't think they could. You may take any person that may be decidedly crazy, and you drop in and talk and sometimes you won't know there was anything the matter with them.

Q. So that you have seen a number of cases of mental trouble? A. Oh, yes.

Q. Insane people, during your practice?

A. Yes. I committed either 11 or 12 when I was out in the country; almost one a year, I know.

Q. Did you have any hospital experience in connection with your medical work?

A. Not any more than just the clinical.

(Deposition of Dr. John Watson.)

Q. That is what I mean. A. Yes.

Q. Now, something has been said about whether he talked threateningly. Did he at any time talk threateningly?

A. Well, he did in this way: He came into my office a few days before he left. He had a stick about that long, about two feet long, a piece of a board that he had stuffed down in his waistcoat, and he showed me, he says, "They are killing me up at the house; they hit me over the head with this stick." He says, "My wife isn't safe there." Well, I said, "Albert, you are standing the racket pretty well; I don't see any signs of cracks."

Q. That is all.

Recross-examination.

(By Mr. GORDON.)

Q. You did not make any investigation to see whether his wife had been beating him over the head with that stick?

A. Well, there was no evidence of it. She must have struck very mildly.

Q. You say that the form of his malady is general paresis? A. That is my diagnosis.

Q. He walks all right, doesn't he?

A. He walks fairly well, yes.

Q. And he can use his arms? A. Oh, yes.

Q. Well, what is general paresis?

A. Well, they use the term paresis in distinction from paralysis, because paralysis you always associate with inability to use muscles; but general paresis means partial—tendency towards paralysis.

(Deposition of Dr. John Watson.)

In general paresis, that is one of the points, it is like every other disease, it may come on somewhat acute and then they may have a remission—in fact our best authorities say that the remission may be so that even the attending physician is led to believe that they are fully recovered, and then it will break out again.

Q. Well, every man that gets drunk so that he cannot walk, there is evidence there present of paresis, isn't there?      A. Yes, that is all right.

Q. Drunkenness, staggering drunkenness is a form of paresis, isn't it?

A. It would be a paretic condition.

Q. A partial paralyzed condition?      A. Yes.

Q. Paresis, is that necessarily a brain disease?

A. Yes.

Q. Then these people that get what they call slow paresis, where they have trouble getting up and a little unsteady on the feet as though the ankles are weak, what they call insipient paresis, is that a brain disease?      A. Brain or spinal.

Q. And then when a prize-fighter hits another one on the point of the jaw and he falls in a heap, he has paralyzed him to a certain extent, that is a form of paresis that that man suffers for the time being?

A. I don't know as you would call it paresis. That is shock.

Q. Well, it is a paralysis of the muscles caused by an action on the brain, isn't it, for the time being?

A. Yes, that is right.

Q. That is all.

Deposition closed.

JOHN WATSON.

*In the Circuit Court of the United States for the  
District of Idaho.*

THE UNITED STATES OF AMERICA,

Complainant,

vs.

THE BARBER LUMBER COMPANY and Others,  
Defendants.

United States of America,

County of Erie,

State of New York,—ss.

I, John J. Sly, a Notary Public in and for the County of Erie and State of New York, do hereby certify that pursuant to the stipulation entered into between counsel for the respective parties herein, on the date indicated in the foregoing deposition, I was attended by Mr. Peyton Gordon, counsel on behalf of complainant, and Mr. Joseph G. Dudley, counsel on behalf of defendant *The Barber Lumber*, and by the witness Dr. John Watson; that said witness was by me first duly sworn to testify the truth, the whole truth and nothing but the truth in the above-entitled cause, after which, by consent of counsel for the respective parties, his deposition was taken by me stenographically and reduced to typewriting, and thereafter read over to said witness and signed by him in my presence.

I do further certify that I am not of counsel or attorney for either of the parties, nor in any wise

interested in the event of the cause named in said caption.

In witness whereof, I have hereunto subscribed my name and set my seal this 8th day of May, in the year of our Lord, one thousand nine hundred and nine.

[Seal] JOHN J. SLY,  
Notary Public in and for Erie County, New York.

Filed May 21, 1909. A. L. Richardson, Clerk.

*In the United States Circuit Court, District of  
Idaho.*

UNITED STATES OF AMERICA,

Complainant,

vs.

BARBER LUMBER COMPANY et al.,

Defendants.

It is hereby stipulated by and between counsel for the representative parties that the deposition of John I. Wells, John Kinkaid and L. M. Pritchard may be taken at the instance of and in behalf of the defendant, Barber Lumber Company, before Cora E. Montgomery, at the city of Los Angeles, California, on this 2d day of April, 1909, and from time to time thereafter until such deposition shall be completed without other or further notice, and that such depositions when taken may be filed and used in the above-entitled action with the same force and effect as though the same were taken on notice and before an examiner duly appointed by said Court appearances for complainant, Payton Gordon and Charles A. Keigwin; for defendant, Barber Lumber Company, C. T. Bundy.

Thereupon the defendant called as a witness JOHN I. WELLS, who, being first duly sworn, testified as follows:

**[Deposition of John I. Wells, on Behalf of the Defendants.]**

Mr. Keigwin, counsel for the complainants, observing the presence in the room, Mr. John Kinkaid and Mr. L. M. Pritchard, together with Mr. Wells, the witness sworn for examination, object at the presence of the other two gentlemen whom Mr. Bundy has expressed a purpose to examine as witnesses, and request that the said witnesses not under examination withdraw from the room in accordance with the rule on the subject heretofore laid upon all witnesses in this case.

Mr. Bundy, the defendant, objects to the gentlemen leaving the room for the reason that no such rule has been made in this case, pertaining to the witnesses of defendant, and for the further reason that counsel for defendant will be unable to conduct the examination of John I. Wells without the assistance of the parties named, and for the further reason that Mr. John L. Kinkaid, are parties defendant to this suit.

Mr. KEIGWIN.—Before the commencement of the examination of the witnesses, John I. Wells, counsel for the complainant, objects to the examination of the said person as a said witness in this cause upon the ground that he has been present during the examination of most of the witnesses for the complainants in violation of the rule upon that subject,



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and is thereby rendered incompetent as a witness in this cause.

(Mr. BUNDY.)

Q. Mr. Wells, during examination of complainants' witness at Boise, you attended court a good portion of the time, did you not? A. Yes.

Q. At that time had you been advised as a witness? A. No, sir.

Q. Had you learned of the fact that you would be called upon to testify in this case until your departure for Boise from this city? A. No, sir.

Q. When was it that you learned?

A. It was Monday, the 26th of March, and then I guessed that that was what it was for. Got a telegram from Mr. Kinkaid to come to Reno. I guessed that was what it was for.

Q. When were you first actually told or requested to appear as a witness?

A. March 30th, I believe.

Q. Mr. Wells, where do you live?

A. Boise, Idaho.

Q. How long have you lived there?

A. Since the spring of 1902.

Q. Where did you live before that?

A. Centerville, Boise County, Idaho.

Q. How far is Centerville from Boise?

A. About 45 miles.

Q. How long did you live at Centerville?

A. About six years.

Q. What was your business while you resided at Centerville? A. Mining mostly.

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Q. Are you familiar with the section of the country in the Boise Basin and vicinity, which is timbered?      A. Yes, sir.

Q. For how many years have you been familiar with that district of land in the Boise Basin?

A. Beginning the latter part of April, 1895, I arrived in Centerville.

Q. In 1895, state if you know as to whether or not this timber, or some portion of it, was open to entry?      A. No, sir, not that I know of.

Q. Do you know as to whether or not any entries were made under the Timber and Stone Act in the Boise Basin prior to the summer of 1901?

A. None that I know of, no, sir.

Q. State if you know when the entries first began to be made in the Boise Basin.

A. In July and August, 1901.

Q. State whether or not anything occurred during the year 1901, to prompt the entering of these lands, in the way of development of the country, I mean?

A. What I learned was through the papers. We had taken them up to the mine, and there was a good deal of boosting going on for a railway during that time, and also timber cruisers arrived about that time.

Q. Do you know the names of the cruisers that arrived, and where they were from?

A. Yes, sir, I found out afterwards that it was Mr. Downs, Mr. Snow, and Harry Curtis as a surveyor, he was not a cruiser. Mr. Downs and Mr.

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Snow from Minneapolis, Wisconsin, and Mr. Curtis from Boise.

Q. Did you know Mr. Downs or Mr. Snow when they arrived in that country? A. I did not.

Q. Well, up to that time had you any experience in the timber and stone business? A. No, sir.

Q. Can you state who it was that was reported as about to build a railroad in the Basin?

A. Yes, sir. There was a company organized in Boise who were surveying a railroad up to the creek, and that company consisted of E. E. Garrett and James Pinney and Norman Ruick, and a surveyor by the name of Stephens and a fellow by the name of Beggs.

Q. What, if any, position did Garrett hold at that time?

A. Receiver of the land office at Boise, Idaho.

Q. Did Mr. Ruick hold any government position at that time? A. No, sir.

Q. State if that was the Mr. Ruick who afterwards served as United States District Attorney.

A. Yes, sir.

Q. State what, if any, effect the discussion of this railroad had with reference to your course of action in timber and stone matters.

A. I had been working at the Twin Sister Mine and had been working there for 18 months, and when the railroad agitation came up, I quit the mine and went to doing assessment work on claims of my own about two miles from the Twin Sister mine, and it was during that time that these parties came from

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the east to locate timber land. I went home every night from my work and I met these parties in Centerville at my brother's place of business.

Q. Who were the parties you refer to that you met?

A. Mr. Downs, Mr. Snow, also Mr. Manning and Mr. Curtis.

Q. State as to whether or not you made a filing on a timber or stone claim?

A. Yes, sir, I did.

Q. Can you give the date on which you filed?

A. September 10th, I think, 1901.

Q. Did anyone else file at the same time you did?

A. My wife and Homer Granger and his wife.

Q. Did you know Homer Granger?

A. Yes, sir.

Q. How long had you known him?

A. Ever since I had been in Centerville.

Q. What was his business? A. Miner.

Q. Did you afterwards make final proof on your claim? A. Yes, sir.

Q. On what date?

A. December 12th, 1901.

Q. After you had filed on this claim state as to whether or not you located other people.

A. Yes, sir, and also before I filed.

Q. Can you give the names of some of those you located?

A. Yes, sir. Arthur Anderson, Bert Nugent, Edward Able Hunter, James T. Ball and Harvey H. Wells.

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Q. Was this before or afterwards?

A. Before.

Q. Can you state any that you located by yourself after your location was made?

A. No, sir, not by myself.

Q. Did you, at or about the time you filed upon the land, enter into an arrangement with Patrick Downs to carry on a locating business?

A. Sometime after that, probably three or four weeks; let's see, there was a while right after that, that Mr. Snow located some people that I had got to go up to take timber, and the price of the location fee was cut between Snow, Downs and myself, and right after that Downs and I went into business together, solely together, no one else with us.

Q. What was the locating fee charged in that vicinity by you gentlemen? A. \$25.00.

Q. What charge did you make for the five you located before you filed yourself?

A. \$25.00.

Q. What do you mean by the locating fee being cut?

A. It was divided equally between the three of us.

Q. Then did Mr. Snow go back to Minneapolis at that time? A. Sometime about that time.

Q. And you and Mr. Downs formed a partnership for locating business? A. Yes, sir.

Q. Now, state how you carried on that business, what you did, and what he did.

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A. When I came to Boise, I stopped at the Pacific Hotel and *restled* applicants for timber lands, They were to pay the expenses up there and \$25.00 locating fee after their filing was accepted at the land office.

Q. What did Downs do?

A. He showed them the land, took them over the land, give description of the land which they brought to Boise and I assisted them with their papers and also directed them to file.

Q. State approximately, if you can, how many entrymen were located during September, October and November, 1901.

A. In the neighborhood of forty.

Q. What interest did you have in the location of these lands by these entrymen, Mr. Wells? How were you interested in getting them to file upon lands?

A. I was after my \$12.50 location fee.

Q. Did you have any other interest in the location of people at that time?

A. No, sir, I did not.

Q. Were you acting for any person in procuring them to locate on timber land, other than yourself and Mr. Downs, as locators?      A. No, sir.

Q. State as to whether or not any representations were made by you or by your authority or in your presence to any person located by your firm with reference to the sale of lands when they had acquired title.      A. No, sir.

Q. State as to whether or not any representations



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were made to any locator or entrymen as to what they could make out of the entry of lands under the Timber and Stone Act.

A. No, sir. We figured that it would be worth about 50¢ per one thousand when the State sold its selections in that vicinity. We had information by the newspapers where the State had sold timber land in Idaho at that price, 50¢ per thousand. We thought our timber was just as valuable per one thousand as the State's.

Q. At that time, during the fall of 1901, did you have any means yourself for buying large tracks of timber lands, Mr. Wells? A. No, sir.

Q. Were you acting for anybody, or under any arrangement with any person, firm or corporation, who was seeking lands from the Boise Basin at that time? A. No, sir.

Q. What, if anything, occurred at or about the time the first entrymen began to make final proof to December, 1901?

A. Well, these five, Anderson, Balls, Hunter, Wells, Nugent, Wells, a brother of mine; Nugent, I had worked with him in the same mine for 18 months and before that time he was employed by me on the Buiser mine for a period of about six months. Arthur Anderson who is an old-timer in the basin, placer mined all his life ever since the discovery of California, I believe, or something like that, I had known ever since I landed in the basin in 1895. James T. Ball was a clerk in our hotel in Centerville about three years prior to the time he filed on the

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land, and I was intimate with Mr. Ball for about three years. Edward E. Hunter run a livery stable, also a private hotel in Centerville, and I had known him for about four years, when the time come to make final proof these gentlemen came down two or three days before the date set for final proof, and from the time they had filed up to the time for final proof, their friends and old-timers in the basin had kicked on anyone filing on this timber land, claiming it was mineral land, and they never could get title to this land, and when they got to Boise they told me that they had just throwed their money away in coming down to file on the land and wanted to see different lawyers in Boise as to the probability as to their getting title to this land. The lawyers differed, and the boys had a good time, spent their money a good deal, and give up making proof altogether by the time the date set by the land office for them to make proof had arrived, and they had made up their minds that they would make proof. Some of them were short of money by this time, and was trying to borrow the money from the banks and also from me; and I had the money, but I did not know whether it would be just right for me to loan the money to them to make proof, as I located them, and I went to John Kinkaid, and asked his advice, and he advised me not to do it, not to let them have the money. It run on two or three days more, and finally I let them have the money. I let Mr. Nugent have \$412.50. I let Mr. Anderson have \$250.00, and they made the proof.

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Q. Did you let the other three named have *month* at that time? A. No, sir.

Q. Whose money was that you loaned these gentlemen to make final proof? A. My money.

Q. Well, up to that time had you arranged, or had you any conversation with any person of means who was desirous of acquiring timber in that country?

A. No, sir.

Q. Do you remember the date Mr. Anderson and Mr. Nugent made their proof?

A. Not exactly, but it was something about the 10th of December, 1901, before me and my wife made final proof.

Q. You and your wife made proof on the 12th? Did anyone else make proof at the same time you did?

A. I am not sure, but Mr. Homer Granger proved up the same day we did, or a day or two after we did.

Q. Did his wife prove up? A. No, sir.

Q. Do you know why?

A. She was sick.

Q. Now, where did you and your wife get your money with which to make your proofs?

A. Mrs. Wells made her money cooking for miners. I made mine working in the mines and interest in a saloon and locating timber.

Q. Now, up to the time that you made your final proof on December 12, 1901, had you interested or had any talk with a man by the name of Sweet?

A. I borrowed of Mr. Sweet something near a

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\$100.00. I think it was about \$130.00. I lacked that much to make my proof at that time, and I borrowed from Mr. Sweet as a friend.

Q. Did you afterwards pay it?

A. Yes, sir.

Q. Did he have any interest in your claim?

A. No, sir.

Q. Did you give him any security on your claim?

A. No, sir.

Q. As a matter of fact, you held your claim until 1906?

A. Yes, sir.

Q. Then sold it to whom?

A. Chapman, manager of the Barber Lumber Company.

Q. How much did they pay you for it?

A. \$1250.00.

Q. How was that payment made, Mr. Wells?

A. This was paid by check on the First National Bank of Boise.

Q. That was October, 1906?

A. Yes, sir, along that time.

Q. That was the same land you acquired by your final proof made December 12th, 1901?

A. Yes, sir.

Q. State as to whether or not, during the winter of 1901 and 1902, there was more or less discussion among the entrymen as to the proceedings which had been instituted against timber and stone entries in the State of Oregon.

A. There was a good deal of agitation in regard to land frauds in Oregon.

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Q. State as to whether or not in the Boise Basin they made investigation at or about that time.

A. Some time in the spring, I think, of 1902.

Q. State as to whether or not you discovered along in December or January some time in the winter of 1901 and 1902, that many of the people you had located upon land and for which you had been paid a locating fee were having trouble in raising the necessary money with which to make final proof.

A. Yes, sir; practically all of them. They came to me and said they could not raise the money and wanted to know if I could not find someone to make them a loan of that much money.

Q. Did you then try to make some arrangement with someone to loan the necessary sum to prove up with?

A. Yes, sir.

Q. With whom did you arrange, with anyone?

A. William Sweet.

Q. About what time was it that you made arrangements with Mr. Sweet?

A. Sometime right after Christmas, 1901, between that and the 10th of January, 1902.

Q. Tell what that arrangement was?

A. I spoke to Mr. Sweet something on this line: That I had located a certain number of people on timber claims up near Centerville, and told him that these people did not have the money to make proof, and that I had collected from each one \$25.00 for locating them and that they were talking about coming back onto me for what they were out, and not making proof at all, and Mr. Sweet, he says, "I'll let you

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know." He says, "I have got the money, but I will have to get some advice and look into the matter before I can give you an answer." He afterward came to me and asked me about the honesty of these people that had filed on timber land, and I told him as far as I knew, that they were all right, and he told me, "All right, to go ahead," and he would let them have the money through me.

Q. Now, there has been considerable evidence here as to money being furnished some of these early entrymen by you and in some instances, delivered to them by one Dean West. Whose money was this you were loaning? A. Mr. Sweet's.

Q. State how Mr. Dean West came to handle any of this money.

A. Mr. West was well liked in his neighborhood and seemed to know all these people, or the biggest portion of these people, and in fact, had made up two or three of the parties that had went and filed on timber and those that had made up the party, those included in their parties, I handed Mr. West the money to make proof with and instructed Mr. West to either get a note from them or bring me the receipt of what they got for the money as security for the money.

Q. How was Mr. West interested in the locating firm of Wells and Downs?

A. I agreed to pay Mr. West \$5.00 for getting up a load to go out and locate timber.

Q. And he would get \$5.00 for his trouble?

A. Yes, sir.



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Q. Was that an inducement for Mr. West?

A. I was a stranger in Boise, and it was quite an aid to me to have Mr. West make up these parties.

Q. At the time you located these people, during 1901 (confine to that for the present), did you make any representations to them or authorize any such, or were any made in your presence to such persons to the effect that the money would be furnished to them?

A. No, sir. I did not. I heard rumors that Mr. Manning, that there was a company behind him, that Mr. Manning was the party that had induced Mr. Snow and Mr. Downs to come out from Minneapolis and file on timber claims and he also hired Mr. Harry Curtis, a surveyor, to work for him in Boise Basin, as to running out locations.

Q. What became of Mr. Manning who was locating them?

A. I learned that Mr. Snow was going to throw him out of the Capitol Hotel of Boise City, if he did not do as he had agreed with him, and Mr. Manning disappeared.

Q. Did he ever return to Boise?

A. Never to my knowledge.

Q. Were you representing anybody in making these locations in 1901?

A. No, sir; no one but myself.

Q. At that time had you any talk with Mr. John Kinkaid with reference to this timber other than his own entry?

A. No, sir; no more than I went to Mr. Kinkaid

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for his advice, which I have testified to.

Q. Did you know or had you any talk whatever with Mr. Frank Steunenberg? A. No, sir.

Q. Well, had you any talk with Mr. William Sweet, up to the time you told us about, 1901?

A. Only for borrowing money on my own claim.

Q. Did you know John T. Barber and Sumner G. Moon? A. No, sir.

Q. Did you know A. E. Palmer?

A. No, sir.

Q. Or Horace S. Rand? A. No, sir.

Q. Did you have any talk with L. M. Pritchard with reference to this land during the year 1901?

A. No, sir; did not know him.

Q. Did you at any time tell any entrymen or entrywomen that you had located, or that the firm of Wells & Downs located during the year 1901, that any money would be furnished them for proving up?

A. No, sir; I did not.

Q. Did you tell any such entryman or entrywoman what they could make by filing upon a timber and stone claim? A. No, sir.

Q. Did you know, Mr. Wells, what could be made at that time? A. No, sir.

Q. Did you know of anyone at that time that would advance money or buy these claims?

A. Not before I talked with Mr. Sweet, as I testified.

Q. So, that all of the entries or filings during the months of July, August, September, October, November and up to Christmas of December, 1901, with

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which you had anything to do were made before you had made any arrangements with any person, firm or corporation, for the advancement of money under any conditions at all.           A. Yes, sir.

Q. Is that a true statement of the fact?

A. Yes, sir.

Q. At the time you located these people upon the land, or any of them, did you have any talk with them whatever as to what they should do with the land when they acquired title?           A. No, sir.

Q. Were you authorized by any person, at any time to buy these claims from the entrymen before the year 1902?           A. No, sir.

Q. Did you at any time locate any man or woman upon timber claims in the state of Idaho under an agreement or arrangement as to what they should do with the title when they acquired it?

A. No, sir.

Q. Did you ever authorize Dean West or any other person to state to any entryman or entrywoman, that money would be furnished them with which to make final proof or that the lands which they were about to acquire would be purchased by any person, firm or corporation?           A. No, sir.

Q. Did you make a purchase yourself of claims, Mr. Wells?           A. When?

Q. Any time after final proof.           A. Yes, sir.

Q. What claims did you personally, buy?

A. I bought Mr. J. J. Keane's.

Q. Did you ever buy any other claim?

A. No, sir.

Q. Well, after you made this arrangement with

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Mr. Sweet to loan money to the parties you had located or to such of them as needed it, did you, from time to time, get money from Mr. Sweet for that purpose?      A. Yes, sir.

Q. Well, just state how that was done, who handled the money and how?

A. Mr. Sweet would get the money and bring it to me, either at my office or the Overland Hotel where he was stopping. I would go to him and tell him so and so was going to make proof and wanted to borrow the money and he would go and get the money and give it to me.

Q. What did you do with the money?

A. Well, I gave it to the man who was going to make proof.

Q. What, if any, security or evidence did you take?

A. Sometimes I took their note, others I relied solely upon the recommendations furnished me by Mr. West on these people to return to me the receiver's receipt that they would get for the land after they got proof.

Q. When you did not take notes, state whether or not receipt was brought to you?

A. Yes, in most cases.

Q. Well, what kind of a receipt was that?

A. Well, it proved to be a temporary receipt, I mean by that, it was a receipt for the money by the receiver, signed by the receiver of the Boise Land Office.

Q. Well, how did they furnish any security to you, Mr. Wells?

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A. The receiver of the Land Office requested these people that when he got orders from the commissioner of the general land office to issue a final receipt that he would do so, upon a return of this temporary receipt, and when I had the receipt in my possession they could not get a final receipt, so I would be posted as to when they were notified that this final receipt was about to be issued by them coming to me after the temporary receipt.

Q. At the time of delivering the money to these entrymen with which to make final proof, state as to whether or not you had any negotiations with them looking to the purchase of their claim.

A. No, sir; not any. I felt relieved for being able to let them have the money because there was a lot of vacant timber in that country that I intended to begin locating anew as quick as Mr. Downs could go into the timber in the spring on account of the snow.

Q. What effect would it have had on your business as a locator if these men located in 1901 had not made final proof?

A. That I could not say, for the reason that my object was, that if these people did not make final proof that it would be much harder for me to get applicants for the timber. As to what the outcome would have been, I could not say, if they had not made proof.

Q. Was the loaning of the money to the entrymen made any part of any agreement by which the entrymen obligated themselves to turn over their property

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to you or any person you might name?

A. No, sir.

Q. Mr. Wells, during the entire course of your timber dealings in the Boise Basin, did you ever negotiate with any person for the purchase of his or her claim before the regular receiver's final receipt and final certificate had been issued?

A. No, sir.

Q. Now, after Mr. Sweet had made this arrangement with you, state as to whether or not any more people were located by you and Mr. Downs in the Boise Basin proper, during the months of January, February, March and the first ten days of April, 1902?

A. Yes, sir, there had been. I think in March, we began locating anew.

Q. Were any of these entrymen advised by you, or told by you, or did you advise anyone to tell them, that the money to make final proof would be furnished to them?

A. No, sir.

Q. Did you locate, you or your firm, during these months, as the representative of anybody further than yourself?

A. Myself and Mr. Downs.

Q. Did you have any interest whatever in the lands they were entering, other than your fee as a locator?

A. No, sir.

Q. Did you advance any money to any entryman or entrywoman to make their final proof after April 10th, 1902?

A. No, sir; except I might have aided one or two, which was my own money.



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Q. Can you recall anyone?

A. Mrs. Thompson, I can recall, and I think one or two others, I loaned a portion of the money that they made final proof on.

Q. Whose money was it that you loaned to any entrymen or entrywomen after April 10th, 1902?

A. My own money.

Q. Did Frank Steunenber, John Kinkaid, A. E. Palmer, James T. Barber, Sumner G. Moon, Horace S. Rand, George S. Long, or William Sweet, or either of them give you any money to be loaned or advanced to entrymen or women after April 10th, 1902? A. No.

Q. Did John Kinkaid ever give you any money at any time to be advanced or loaned to entrymen or entrywomen? A. No, sir.

Q. Was Mr. Kinkaid at any time interested in the locating business of Wells and Downs?

A. No, sir; only in a few instances he instructed friends of his, I believe, to see me or else Mr. Downs.

Q. I mean was he interested in a financial way in your office? A. No.

Q. Was Mr. Pritchard? I did not include Mr. Pritchard in that other question. Did he ever give you any money to advance to entrymen or entrywomen at any time? A. No, sir.

Q. Did Mr. Sweet, at any time, so far as you know, buy any of the lands entered by entrymen or entrywomen in the Boise Basin?

A. No, sir; not to my knowledge.

Q. Did you know what Mr. Sweet's object was,

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loaning you money for these entrymen or entry-women?

A. Mr. Sweet's business was a promoter of mines, and my opinion as to Mr. Sweet's idea, was that he intended to hunt a purchaser for these lands and then buy.

Q. Did you know of the fact, that during the months of December, 1901, and up until June, 1902, there was a general order suspending the order of timber and stone of financial value until they could be heard at Washington?

A. I had heard that there was a general order by the commissioner or of Secretary of the Interior that covered the whole of the Northwest Territory. Mr. Garrett, never, at any time, give out that information to me, or any of the applicants that I know of.

Q. Did you know of the fact, that owing to the failure of the entrymen to get final receipts, that Mr. Sweet became somewhat anxious to dispose of his interests?

A. Yes, sir.

Q. Do you know of his disposing of it?

A. Mr. Sweet came to me and told me that he had sold out his interests.

Q. And to whom did you next hear he sold to?

A. I understood from what he told me that he had sold to someone through Governor Steunenberg. I afterwards found out that it was a man by the name of A. E. Palmer.

Q. After the sale from or by Sweet to Palmer, state as to whether or not, you ever advanced any money of Mr. Palmer's or Mr. Steunenberg's or any

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other person than yourself, as you have stated, to any entryman or entrywoman to make final proof?

A. No, sir; I did not.

Q. Did Governor Steunenberg, ever, at any time, give you any money for such purpose?

A. No, sir.

Q. Did you know the defendant, L. M. Pritchard?

A. Yes, sir.

Q. When did you get acquainted with him?

A. During the spring of 1902.

Q. Did Mr. Pritchard have any interest in or with the firm of Wells & Downs, or in the business they were carrying on? A. No.

Q. What was Mr. Pritchard's business of Boise?

A. Real estate and law business.

Q. Did you have occasion to employ him in any matters?

A. Yes, I had him do quite a little business for me in a mine, but had nothing to do with him in regard to the timber business until I bought John Keane's land. Mr. Pritchard made out the deed at my request.

Q. Now do you know who John Keane deeded that land in the first instance, to whom?

A. To me, myself.

Q. What did you do with that land?

A. Sometime after, I sold it to Governor Steunenberg.

Q. What, if anything was done toward a new deal?

A. Governor came to me one day, he says, "That

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deed of Keen's to you, I would like for you to see Mr. Keen and have him make a deed to my people," and it proved to be Palmer. I saw Mr. Keane and told him I was requested by a party to whom I had sold his land to, to make a new deed, so Mr. Keen went up to Mr. Pritchard's office, or said he would go, and I never heard anything more about him. I supposed he had given a new deed and always did suppose it.

Q. Mr. Wells, did you ever, at any time, buy any of the lands you located for the Barber Lumber Company?      A. No, sir.

Q. Did you ever purchase any of the lands you located for Governor Steunenberg?

A. No, sir.

Q. Or for A. E. Palmer?      A. No, sir.

Q. Or for Mr. Pritchard, Mr. Kinkaid, Mr. Long or Mr. Rand or Mr. Barber or Mr. Moon?

A. No, sir.

Q. You understand, Mr. Wells, the names I have mentioned are the persons of the defendants named in this action?      A. Yes, sir.

Q. Did you assist in any manner, the Barber Lumber Company or any of the defendants I have named in negotiating or purchasing the lands of the people you located?

A. The folks I had loaned the money to, Mr. Sweet's money, I was requested some time in June, 1902, by Mr. Steunenberg to let him know what parties I had loaned money to, and he said that he wanted me to look out for that and collect the money

(Deposition of John I. Wells.)

that I had loaned to the applicants or people I had loaned to, and when I was talking with Mr. Sweet, right away after he sold out, Mr. Sweet says: "Now, John, I have made a little money. Now, he says, you can charge these folks for the use of the money, and take that for my services in the matter, and that was what I did when the Governor came to me and told me he wanted me to collect it. In almost every instance I collected more than I had actually loaned these people.

Q. How did you make the collections?

A. Well, these people would come to me as soon as the Land Office notified them that their final receipt would be issued. They were so pleased that they would come to me and tell me about it. If I did not have their receipt in my possession I went and got it and turned it over to them, and they would go up and get the final receipt. Then they would want to sell, and I encouraged them to sell, because I wanted to collect that money.

Q. To whom did you direct them, as a place where they could sell?

A. Mr. Pritchard's office.

Q. (Repeat.)

A. I would tell them that I would see, and for them to come back either in the afternoon (if it happened to be in the afternoon that I saw them), the next day, and I would let them know whether they could sell it or not. In the meantime I would see Mr. Pritchard.

Q. And what, if any, arrangements did you make

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with Mr. Pritchard about the money?

A. I told him so and so wanted to sell his claim, and that I had requested him to come back at a certain time, and I would give Mr. Pritchard a statement of what I wanted to collect and he would see to it.

Q. Did you arrange the price for which the property would be sold? A. No.

Q. Did you take that up with them at all?

A. I would send them to Mr. Pritchard and he would make the deal as to price, and then he would deduct what I asked him to.

Q. What did you do with the money Mr. Pritchard would collect for you and turn over to you?

A. I would keep it until I saw Mr. Steunenbergh, and I would return to him the exact amount that I had loaned to them for Sweet.

Q. And the balance you kept for yourself?

A. And the balance I kept for myself.

Q. For whom was Mr. Pritchard working at that time?

A. I understand he was acting for Mr. Kinkaid.

Q. In what capacity?

A. Buying timber claims and acting as Notary, something of that kind. Just what capacity, I could not say.

Q. Now, you have told us your connection with the claims entered upon which you loaned Sweet's money, what, if anything, did you have to do with the purchase of claims of the parties who did not borrow money from Sweet?



(Deposition of John I. Wells.)

A. Nothing, whatever.

Q. Mr. Wells, how many distinct tracts of timber was up there which was involved in this timber, groups I mean?

A. There was the Basin timber, and the North Fork of Boise River and Crooked River and another tract known as six-4.

Q. Now the North Fork and Crooked River are spoken of in this evidence as "Crooked River Tract"? A. Yes, sir.

Q. So there are three different tracts?

A. Yes, sir. The original entries were made in what was called the Basin country. To be more exact, it was in Township 7 North, Range 5 East and 8 North, Range 5 E., 6 N. and R. 5 East.

Q. Did you know how many entries altogether were made in the Basin tract?

A. About 117 or 118.

Q. They were substantially all made in the year 1901 and the first six months of 1902?

A. Yes, sir, practically all of them.

Q. Now what was the tract upon which entry was made? A. Crooked River Tract.

Q. Who discovered the Crooked River Tract?

A. Mr. Downs.

Q. When did he discover it?

A. In the summer of 1902, in June and July.

Q. For whom was Mr. Downs acting for, if any one, when he discovered the Crooked River Tract?

A. He was working for me and himself.

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Q. Did he go over the land during the summer?

A. Yes, sir.

Q. Did he make an estimate for the purpose of enabling him to locate people upon it?

A. Yes, sir, in regard to the body of timber that was there, he told me it was something like 100 claims up there when he came down and reported.

Q. Who paid Mr. Downs' expenses when doing that work?

A. I paid his expenses as he reported to me. He went up on the South Fork of the Boise River, my instructions, and crossed over to the Middle Fork, and from the Middle Fork over to the North Fork and from the North Fork over to the Crooked River, and arrived at Mr. Kempner's ranch, and he stayed there something like ten days or two weeks, which was the most of the expenses of his trip at Mr. Kempner's, which I paid.

Q. Was Mr. Downs or you or the firm of Downs & Wells employed by Mr. Kinkaid, Mr. Steunenber, or any one else to cruise that country?

A. No, sir.

Q. What was your object in making the cruise?

A. Was to locate people and charge for locating fee, which was our business.

Q. Had you any other interest in the locating of claimants upon this land, except the pay you received from locators from entrymen or entrywomen?

A. No, sir.

Q. Had you executed all the claims in what was known as the Basin country at that time?

(Deposition of John I. Wells.)

A. Yes, sir.

Q. Was it necessary to discover or find new timber if you were to continue in the locating business?

A. Yes, sir.

Q. Did Mr. Kinkaid have any interest at that time in the firm of Downs and Wells, in the business they were carrying on?

A. No, sir.

Q. Did Mr. Steunenberg?

A. No, sir.

Q. Mr. Pritchard?

A. No, sir.

Q. Did any one have any interest other than you two?

A. No, sir.

Q. When did you begin locating people in the Crooked River country?

A. About September, 1902.

Q. State what part of the work you did and what part Mr. Downs.

A. Mr. Downs went up with the first load of people and he stayed up there practically until it was all located. I sent the people up to him and seen to collecting the money for locating them or aided them in any way in getting up their papers, and also instructing them where to go to file.

Q. State as to whether or not there was a great demand for entries at that time, by the people of Boise.

A. Yes, sir. After the first load or two went up, why others followed them unbeknown to me, and I had practically nothing to do in regard to sending them up. I was a man of leisure most of the time when Mr. Downs was working.

Q. State as to whether or not you had many ap-

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plicants by people residing in Boise.

A. Yes, in the spring of 1902, many applicants, and it was very easy to make up a load of people to start out the next morning for the timber.

Q. Was it necessary after the spring of 1902, to urge or solicit people to exercise their rights on the timber and stone action?

A. No, sir. Lots of people went into Oregon in the Northwest, looking for timber claims.

Q. State as to whether the principal part of your business while Crooked River was being located, that they did not go up to visit and parties could go up together, get the parties together.

A. The principal part of my business was to collect the location fee, but I went up and aided Mr. Downs in locating or catching up with his business up there. They were camping all up and down Crooked River, awaiting until Mr. Downs could show them their claims. When I arrived up there, the first morning I was there, there was sixteen people left Mr. Kempner's ranch with us to go out and look at timber claims. We got to a certain point in the timber, and I worked one way from that point and Mr. Downs the other. We showed all of them their land that day.

Q. What was your charge for locating these people in Crooked River?      A. \$25.00.

Q. Who paid that \$25.00?

A. The applicant or person who filed.

Q. Were you or your firm employed by any person, firm or corporation to locate any one other than

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the applicant himself or herself? A. No, sir.

Q. There has been some evidence of people having their numbers they were going to locate before they arrived at the timber. I will ask you, Mr. Wells, who gave the various applicants the description of the land they had selected?

A. Mr. Downs, always.

Q. Did you at any time in the Basin of Crooked River send any applicant to view any particular piece of timber?

A. No, sir, with the exception of a man named Humphrey. There was one claim that had been filed on and reverted back to the Government that I gave Mr. Humphrey, that I gave the exact numbers of the land, for which he paid me a \$25.00 location fee.

Q. With that exception, state whether or not, all of the selections were made by the applicants after viewing the land and on the land?

A. Yes, sir, all of them.

Q. What was the universal practice of your firm in the matter of paying the locating fee and giving them the description?

A. I would send them up to Mr. Downs, and Downs having cruised and run out the lines before, would take them out to the corners, take them half around their claim or diagonally across and left it to the applicants and they settled it among themselves, which claim they should have. Sometimes only a party of four, and these four would go out and view four claims in a bunch, and that would be

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all the claims in that vicinity, and Mr. Downs, of course would tell them the facts, and they would decide in what manner, which should have such portions of these four claims, as they agreed on it.

Q. What would Mr. Downs do with the descriptions?

A. He would make out the descriptions, as they had been previously agreed upon between the applicants, and he would put them in an envelope and give them to some one of the party and instruct them to report to me, and then I would make out some of the papers and some times friends of theirs would make out papers, and they would go to the Land Office and get a set of application papers. I would instruct them to that course, they would not know what to do, and I would fill out some of them, and sometimes they would have friends that was handy with clerical work and would have to make them out, and some would fill out their own papers and then would go to the Land Office and file them. After filing was accepted, our fee was then due, and I proceeded to get a hold of that \$25.00.

Q. State as to what connection if any, Mr. John Kinkaid had in the matter of locating people in the Crooked River country.

A. He had none.

Q. Was he interested in any way in the fee you received or in the business you were conducting in the Crooked River country?

A. No, sir.

Q. It appears in evidence, that some, at least, of the filing papers in the Crooked River country,



(Deposition of John I. Wells.)

were prepared by Mr. Kinkaid.

A. I don't know anything about that, only they might have told me at the time that Mr. Kinkaid prepared the papers, making their filing was all that I was interested in.

Q. About how many claims were located in the Crooked River country, beginning September, 1902?

A. Between 90 and 100.

Q. Mr. Wells, did you ever at any time, purchase any of the claims from any of the persons you located in the Crooked River country?

A. No, sir.

Q. Were you employed by Mr. Kinkaid, Mr. Steunenberg, Mr. Rand, the Barber Lumber Company, or any of the other defendants, including Mr. Pritchard, to purchase or assist in purchasing any of the lands upon which you located applicants in the Crooked River country?

A. No, sir.

Q. Were you paid any compensation by way of salary, commission or otherwise, for any of the purchases made by or in behalf of any of the defendants of the lands in the Crooked River country?

A. No, sir.

Q. Did you exhaust the available timber lands in the Crooked River country with entrymen?

A. Yes, sir, everything we thought would appeal to an applicant to file upon, was filed on.

Q. Now, the next and only remaining tract involved in this litigation, is known as the 6-4 lands. What, if anything, did you have to do with locating people on 6-4 lands?

A. Nothing whatever.

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Q. State whether or not you were in partnership with Mr. Downs at the time he located people in that town.

A. No, sir, I was not.

Q. What, if anything, did you have to do with purchasing the lands which were entered in the town of 6-4?

A. None whatever.

Q. What, if anything, did you have to do with selling the lands in town 6-4?

A. None whatever.

Q. Did your connection with the timber business in the Boise country terminate when you located the last of the people in the Crooked River country?

A. Yes, sir.

Q. Have you had anything to do with it since?

A. Yes, in small tracts.

Q. Have you been engaged in locating people since then?

A. Yes.

Q. In the last four or five years how many have you located altogether?

A. Over in the Basin country, none. In 5 north and 3 east and 6 north 3 east, we located about 27 claims a year ago last summer.

Q. Who do you mean by we?

A. Mr. Downs and I.

Q. For whom were you employed in making these locations?

A. No one.

Q. What were you paid for each location there?

A. We got \$125.00 a claim.

Q. Who paid you that amount?

A. The applicant.

Q. Did you have anything to do with the subse-

(Deposition of John I. Wells.)

quent sale of it? A. No, sir.

Q. Do you know whether it is sold at all or not?

A. No.

Q. Now, Mr. Wells, you say you first came with Mr. Pritchard in the spring of 1902. Was that before or after the month of June, when Mr. Pritchard commenced buying claims? A. Before.

Q. Can you state how long before?

A. Something like about three months.

Q. So that would be about March, 1902, you did not know Mr. Pritchard at all?

A. February or March.

Q. When did you get acquainted with Governor Frank Steunenberg?

A. I never was personally acquainted with Governor Steunenberg until about June 1902.

Q. At the time Sweet sold out, April, 10, 1902, up to that time had you met Governor Steunenberg or become acquainted with him?

A. No, sir, I knew him by sight, because he had been pointed out and he had been governor of the state twice. I had never spoken to him up to that time.

Q. Up to April 10th, 1902, did you know Governor Steunenberg was interested with William Sweet in the timber business?

A. No, sir, I did not.

Q. Up to that time did you know of any interest Mr. Sweet had actually acquired in the Boise Basin?

A. Only one thing I knew was him loaning that money, is the only interest I know.

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Q. Now, up to that time, April 10th, 1902, what, if any, business relations had you with Mr. John Kinkaid?

A. The first time I ever saw John Kinkaid, the first time I ever had any business with Mr. John Kinkaid, was just before Anderson and Nugent had borrowed that money from me, that was about the first of December, 1901.

Q. Did you know of Mr. Kinkaid having made a timber and stone entry?      A. Yes, sir.

Q. Who located him, do you know?

A. I showed Mr. Kinkaid a piece of land joining the State timber in 6 north, range 5 east, and was trying to get Mr. Kinkaid to locate on that particular piece of land.

Q. When was that?

A. That was along about October, 1901.

Q. Did he locate on it?

A. No, sir, not at that time.

Q. Did he afterwards locate on it?

A. Yes, sir.

Q. Do you know when?

A. Sometime in January 22d.

Q. Did he pay you anything for locating?

A. \$25.00.

Q. When was that paid?

A. That was paid just after he filed.

Q. Now, up to that time, had you any conversation or talk with Mr. Kinkaid with reference to your business of locating people in that country, except in reference to his own claim?

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A. No, sir, except I had asked his advice on matters in regard to proving up and about locating.

Q. Did you know Mr. A. E. Palmer?

A. No, sir.

Q. Did you ever have any relations or business transactions with him? A. No, sir.

Q. Did you ever have any correspondence with him? A. No, sir.

Q. Did you ever discuss this timber involved in this suit with him? A. No, sir.

Q. Did you have any business transactions with him at all? A. No, sir.

Q. Did you know Horace S. Rand or George S. Long? A. No, sir.

Q. Did you ever have any correspondence with either of them? A. No, sir.

Q. Or any business transactions with them?

A. No, sir.

Q. Did you know James T. Barber or Sumner G. Moon? A. No, sir.

Q. Did you ever have any correspondence with them? A. No, sir.

Q. When did you say you first became acquainted with Governor Steunenberg?

A. In June, I believe, 1902.

Q. State as to whether that was at or about the time the so-called suspension order was vacated and Mr. Pritchard acting for Mr. Kinkaid began to buy this land?

A. It was just before, I believe. I went to the Idanha Hotel and met him there and introduced my-

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self, and told him that I had bought a timber claim, and asked him what it was worth. Well, he said he didn't know, he would see me later about it, and while in conversation at that time, he mentioned the Sweet loans, and he told me that he wanted me to look after collecting that money. I told him I would, for I wanted to make a few dollars out of it myself, so something to that effect.

Q. Mr. Wells, L. K. Burns, who having filed on a claim in November, 1901, and stated that it was under an agreement that he was to turn it over to the Barber Lumber Company for \$200.00 or \$300.00 more than it cost him, and the money was to be furnished with which to make final proof. I will ask you as to whether or not you located Mr. Burns.

A. Mr. Burns was one of the parties that Mr. Dean West had gotten to go and file on timber land for me, and Mr. L. K. Burns, I never knew until about time he was making final proof.

Q. Did you ever promise him \$200.00 or \$300.00 for his land? A. No, sir.

Q. Did you authorize Dean West to make such a settlement? A. No, sir.

Q. Did you promise to furnish him money with which to prove it? A. No, sir.

Q. Did you authorize anyone else to do so?

A. No, sir.

Q. On November 26th, 1901, had you any money in sight for either the purchase or proving upon claims? A. No, sir, I did not.

Q. Had you made any arrangements with any-



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one for money at that time? A. No, sir.

Q. Now, Mr. Wells, Mr. Gillham testified that you asked him to sign an agreement, I think at the time you loaned him money. I will ask you as to whether or not you took an agreement with Mr. Gillham, or any other person as to what they should do with this land?

A. No, sir. I never asked anyone to make an agreement to what he should do with his land, but in Mr. Gillham's case, he said he had money to prove up and he was going to Thunder Mountain, and his wife had filed on a timber claim and he had enough money for her to make final proof, but he said that was about all the money she did have, and he asked me if I would loan her the money, and I told him yes, but I wanted him to sign some due bill or something of that kind, so that I could hold Mr. Gillham as security jointly with his wife for this money.

Q. Did you ask him to sign any agreement of any kind as to what he should do with the land?

A. No, sir, I did not. This other agreement was in regard to the money that I was going to loan his wife, and the agreement was that I had agreed to furnish the money when the time came for her to make final proof, which was verbal, that I wanted Mac' to sign a due bill or something as to hold him as security for his wife's note, the money that I was to loan his wife.

Q. Man by the name of Lane testified that Mr. Pritchard paid him, Mr. Lane, for some of Wells' teams. Did you hire any teams from W. C. Lane?

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A. Yes, I did, a good many of them.

Q. Were they for the purpose of conveying locators to lands?

A. Yes, sir. I would get a load of people to go out, generally in the morning. I would go to the livery barn, order a team and have it at the Pacific Hotel, and my applicants would be there at a certain time, and the people, they would go in the rig and go out to look at the timber. When they came back, if they did not go to the stable and settle the bill, they would come to my office and I would phone to the barn and find out what the bill was, and they would pay it to me, and I would pay it to Mr. Lane.

Q. Did you at any time, or the firm of Wells and Downs, furnish free transportation to applicants?

A. No, sir.

Q. Did Mr. Pritchard pay any team hire to Mr. Lane for you?      A. No, sir.

Q. Mr. Walter Harrison testified that he offered to sell you his land before he had made final proof for \$200.00. Do you remember anything about that?

A. I don't remember.

Q. Did you have any connection with Mr. Harrison in this matter other than locating it?

A. No, sir.

Q. Did you buy or assist in his claim in any way?

A. I might have loaned him some money, either before he made claim or just afterwards. He was building at that time, and I have a faint remembrance of Mr. Harrison coming to me to borrow money.

Q. Did you loan money to everybody that asked

(Deposition of John I. Wells.)

you, Mr. Wells? A. Not by a good shot.

Q. Did you know Ery A. Wilmott?

A. Yes, sir.

Q. You loaned him some money?

A. To make proof, I did.

Q. Did you have any arrangement of any kind with Mr. Wilmott or with Mr. Allen, or with any of the entrymen or entrywomen named in the complaint in this section, Mr. Wells, that you have looked over in reference to what they should do with their land when they got title?

A. No, sir, none whatever.

Q. Did you have any discussion with them about the final proof? A. No, sir, I did not.

Q. What was your understanding of the timber and stone law at that time?

A. I understood that every man or woman over twenty-one years of age, had a right to file on timber or stone land, and they would make application to purchase, and after a certain length of time they would have it advertised; after a certain length of time make proof, then tender the money to the U. S. or land office, and thereupon get their title.

Q. In all your negotiations, did you in any of this matter intentionally or otherwise, do anything in violation of the law as you understood it at that time? A. No, sir, I did not.

Q. Did you ever, for yourself or for anyone else, or authorize anyone else in your behalf, or in behalf of anyone else, to purchase any land upon which you located claims? A. No, sir.

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Q. And with the exception of Keane, I believe, you stated you never did? A. Yes, sir.

Q. In the Keane claim, at the time you bought had final receipt been issued to him?

A. Mr. Keane had been sick for some time, and he could hardly get around and he thought he had to go down to Arizona or New Mexico, I believe the doctors advised him to go down to New Mexico, and he came to me and said he had his final receipt and he wished he could sell his claim, and he asked me if I knew of anyone to buy, and I said "No," and he said, "Could I sell it to you?" I told him I could not pay him much for it and I believe I made him an offer, and I would pay him so much more money than I had loaned him, if he would make me a deed. He went home and came back the next day and said he would take it. His wife came back next day and said Mr. Keane was ready to sell and I told her to go back and tell him to be up to Mr. Pritchard's office some time that afternoon, and that afternoon his wife came down with him in a hack and he took the elevator and came up to the third floor and went to Mr. Pritchard's office and he made me this deed.

Q. Mr. Wells, do you know Mr. J. E. Hobbs who testified in this case? A. Yes, sir.

Q. You heard him testify? A. Yes, sir.

Q. Do you remember his testifying that after he had filed, he had a talk with you, in which you asked him if he was going to prove up, that he said he intended to, and that the day before he proved up you came to his office and handed him some money,

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saying to him at the time, "You know what that is for," and in which you told him to say that it was his own money. Did any such conversation take place?

A. No, sir.

Q. State solely your connection with Mr. Hobbs in this case.

A. I knew Mr. Hobbs for as much as a year before that. He was an assayer. As I was getting a good deal of that work done, Mr. Hobbs had done up to that time practically \$500.00 or \$600.00 worth of work for me, and I asked to go out to Crooked River and take up a claim, and I arranged the party this way: Mr. Hobbs was busy most of the time assaying and he wanted to go Saturday and get back Sunday. I told him he could make it by leaving Boise Saturday noon, and driving late Sunday night, he could make it back. Mr. Downs, this Saturday morning, had left Boise with four other people, and Mr. Vance and Mr. Hobbs was to overtake Mr. Downs and his party on the road, and they thought they could do it because they had a lighter rig, and which they did do. There was nothing said about furnishing money to Mr. Hobbs. He thoroughly understood what it would cost to go up and take a claim and make proof, and there was nothing said about the money to make final proof until probably two weeks before the date was set for him to make his proof. I was in and out of his office almost every day after he filed until he made final proof. About two weeks before he made final proof he told me that he would have to borrow some money, that his busi-



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ness was not as good as he thought it would be, and wanted to borrow it from me. I told him that I might have the money at that time and I might not. We had talked over this thing several times before I told him I would let him have the money, and finally I agreed to let him have the money, and the day before he proved up I took the money to his office, and I told Mr. Hobbs, now this was only loaned to him with the understanding that he was to pay me back as soon as possible, and he said he thought he could pay me back inside of sixty days. I might have said to Mr. Hobbs when I took the money to his office, that here was that money. There was nothing said about how he should swear in the land office.

Q. Mr. Hobbs' entry was made in the Crooked River country in August 10th, 1903, final proof November 10th, 1903? A. Yes.

Q. Can you state whose money that was you loaned to Mr. Hobbs?

A. It was my money.

Q. Mr. Hobbs complained that some excessive location fee was taken out when he sold to Mr. Pritchard?

A. Yes, that was the money taken out at my request for the use of the money.

Q. That was your profit in the matter?

A. Yes.

Q. Next notation I have here was Homer C. Granger, Was there anything here you wanted to speak about?

A. Nothing, only Mr. Homer C. Granger came to



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Boise at my request, as he was one of my witnesses and one of my wife's witnesses, (witness for both of us, and it took a good deal of persuasion to get him to come down at that time.

Q. I believe that you loaned him a small part of the money that he used in making his final proofs?

A. No, sir.

Q. Do you know whose money that was you loaned?

A. Yes, sir. That was my money. That was the reason I had to borrow some money from Mr. Sweet, because I wanted to loan Granger some money, that I borrowed a little over \$100.00 from Mr. Sweet.

Q. Mr. Granger made final proof the same day you did? A. About that same date.

Q. Do you know Mrs. Mary Thompson who testified? A. Yes, sir.

Q. She is the wife of D. G. Thompson?

A. Yes, sir.

Q. *She is the wife of Tom Thompson?*

A. *Yes, sir.*

Q. Did you loan her some money?

A. Yes, sir, that was my money.

Q. Just state the circumstances as well as you can, how you came to loan her money.

A. Mr. Thompson came to me and wanted to know if he could borrow some money from me to prove up on his and his wife's timber claims. He said that he wanted to get the money through his wife's estate and he failed, then he tried to get it from his wife's brother, who was administrator of his wife's

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estate, and I told Mr. Thompson that I had no money to loan and could not let him have it. Well, then, he went and talked with Dean West and Dean West came to me to see if I had any money to loan, and I told him I had no money to loan, but that I might be able to raise a little money, but it would be all I had. Dean told me how hard up they were, so I went to work and tried to raise all I could and Dean said he would do the same, so I raised enough for one claim, and Mr. Thompson says, "I will let my wife prove up," and he said he would readvertise, and by that time he might be able to get the money he was expecting to get, and his wife used my money for final proof, and Mr. Thompson, I learned afterwards, did not readvertise for the reason the receiver told him he could not let him advertise for some reason or other, so he never did make final proof on his claim. Mrs. Thompson sold her land and brought me back my money at my office and tendered me \$25.00 for the use of it. I therefore told Tommy Thompson if he wanted \$400.00 I could let him have it, and he said he did not want it, for they would not let him readvertise.

Q. Did you describe their condition?

A. No, Mr. West did.

Q. Do you know a man by the name of Hoover Sedgwick?

A. Yes, sir.

Q. Did you let him have some money to prove up with?

A. Yes, sir.

Q. Did you hear him testify?

A. Yes, sir.

(Deposition of John I. Wells.)

Q. Did you hear an affidavit read reported to have been made by Mr. Hoover Sedgwick, in which he said that Wells asked him if he had money and gave it to him and told him to say it was his own? Do you remember that? A. Yes, sir.

Q. Did you ever tell Mr. Hoover Sedgwick what to testify in the land office? A. No, sir.

Q. Well, did you ever tell any of the people you located or to the people who you advanced money what to say when they were examined by the officers at the land office? A. No, sir.

Q. Was Mr. Hoover Sedgwick one of the Dean candidates? A. I think so.

Q. Did you know him before?

A. I never knew him till he filed on the land, and came up to my office to pay \$25.00 for location.

Q. Did you ever authorize Mr. Dean West to tell Hoover Sedgwick that there would be a purchaser for the land at any price?

A. No, sir. I did not. The nearest I ever came to that, I told him it would be worth a good deal more money sometime in the near future, and that it was a good investment.

Q. Did you ever authorize Dean West or any other person or prospective entrymen what they could get out of it, or that they could make some out of it?

A. No, sir. I never knew what the timber was worth, only judging from the price of said land sold at auction, I thought it was worth a good deal more money than anyone ever got for timber claims in the

(Deposition of John I. Wells.)

basin of the country, but if I told him at all in regard to its value, it was based upon that theory.

Q. Do you know W. H. Humphrey? .

A. Yes, sir.

Q. Do you know A. R. Brookhart?

A. Yes, sir.

Q. Did you have any talk with Mr. Brookhart, A. E., about loaning him some money?

A. I don't think I ever did.

Q. Do you know his father?

A. Yes, sir. I have known his father since 1880, and I knew him in Kansas.

Q. What was his business?

A. He was a Minister of the Gospel.

Q. Did he have any talk with you about money?

A. Yes, sir.

Q. Did you loan the elder Brookhart some money?      A. Yes, sir.

Q. And for the use of his son, A. E. Brookhart and his daughter, Mrs. Stevenson?

A. Yes, sir.

Q. Was there any talk at the time who it was to be used for?

A. Yes, Mr. Brookhart came to me, I had been to visit him a time or two shortly after I came from the Basin, and just in a visiting way, finally asked him to file on a timber claim. He said he would like to, and his wife spoke up and said, "I would like to file on a timber claim," and he said, "Mary, you ought to go." And it run a little longer and I told her the first load went up I would fix it so she could go, and

(Deposition of John I. Wells.)

so I did.

Q. State if you loaned any money for the young man. I do not know whether I got the right family or not.

A. Yes, I loaned money to the old gentleman, Mr. Brookhart, I think his name was Edward.

Q. Do you remember how much?

A. I loaned one \$400.00 and the other \$412.50, and in all \$812.50.

Mr. GORDON.—Q. Was one of these you referred to for his daughter, Mrs. Stevenson, and the other for his son, Arthur Brookhart?

A. I think it was for the daughter and the son.

Mr. BUNDY.—Q. Then you did not loan for the old lady? A. I think not.

Adjournment, 5:30 until 9:30 Saturday morning.

April 3d, 1909.

Pursuant to adjournment. Present: Peyton Gordon, Esq., and Charles A. Keigwin, Esq., of counsel for complainant, and C. T. Bundy, Esq., of counsel for the defendant, the Barber Lumber Company.

Direct Examination.

(Continued by Mr. BUNDY.)

Q. Mr. Wells, do you know L. S. Stevenson, and his wife, of Boise? A. Yes, sir.

Q. She is the lady you testified was the daughter of Mr. Brookhart? A. Yes, sir.

Q. Did you buy her claim from her yourself?

A. Myself?

Q. Yes. A. No, sir.

Q. She testified that you gave her \$300, for her

(Deposition of John I. Wells.)

claim personally; did you ever pay Mrs. Stevenson \$300?      A. No, sir.

Q. Did you ever have any talk with her on the subject, either regarding the entry or loaning of money?

A. I don't think I ever did. I did all that business with Mr. Brookhart, her father.

Q. Do you know Martin S. Stevenson?

A. No, sir.

Q. Do you recall anything about money in connection with him, loaning him money?

A. I loaned him the money.

Q. Will you state the facts leading up to that loan, and how it occurred?

A. Well, he was one of the filers in 1901, and when I got time to make final proof, I believe someone told him that I was loaning money and he came to see me about it, and I loaned him the money.

Q. Was that at or about the time of making final proof?      A. Yes, sir; just before.

Q. At the time you located Mr. Stevenson on his timber claim was there any talk with reference to loaning him money to make final proof?

A. No, sir.

Q. Was there any talk at the time of filing, or at the time of loaning the money with reference to your purchasing his claim, or selling it?      A. No, sir.

Q. Do you remember what, if any, security Mr. Stevenson gave you, or evidence of indebtedness?

A. He brought me the receipt, if I remember right, from the land office.



(Deposition of John I. Wells.)

Q. Do you know Junius Wright?

A. Yes, sir.

Q. During the time you lived in Boise, did you deal with Mr. Wright in his grocery business, more or less?

A. Yes, sir.

Q. How long did you deal with him?

A. I dealt with him from the time my family moved to Boise until—I think it was in 1905.

Q. Did you have any conversation with Junius Wright in the fall of 1904 or the first few months of 1905 with reference to the amount you were then owing him?

A. Yes, sir.

Q. And more than one such conversation?

A. Yes, several of them.

Q. At any of those conversations did you suggest to him giving security in the way of guarantee by Governor Steunenber?

A. Yes, sir.

Q. Will you state when and where that conversation took place?

A. In his store.

Q. And state the substance of the conversation.

A. Well, he was crowding me for the bill, for the money, and I didn't have the money at that time, but I had it coming to me, and he said he had to have the money, or else he could not let the bill run any longer, and Governor Steunenber went by the store and I called him over into the store and told him the circumstances, and I asked him if he would O. K. me with Mr. Wright; he turned around and walked back towards the back end of the store, and met Mr. Wright; what he said to him I don't know, but Wright said, "That was all right," and my bill ran

(Deposition of John I. Wells.)

right along after that.

Q. Did you have any further talks with Mr. Wright on that subject?

A. No, sir. Mr. Wright never bothered me much after that.

Q. Did you tell Mr. Wright from whom you had money coming?

A. I don't think I did, but I might of.

Q. Did you tell him that you had anything coming from Governor Steunenberg, or from the Barber Lumber Company?

A. No, sir.

Q. Or John Kinkaid?

A. No, sir.

Q. Messrs. Palmer, Rand or Long?

A. No, sir.

Q. Did you afterwards have a conversation with Mr. Wright about two hours in length, sitting on the sidewalk in front of his store?

A. I don't recall any such conversation.

Q. Did you tell Mr. Wright at any time that when John Kinkaid was a member of the legislature he conceived the plan of locating people on timber claims in the Boise District?

A. No, sir; I did not.

Q. And did you tell Mr. Wright that the plan was to have some cruisers locate people and that the plan was to have these people located on claims, for which, when they had proved up on them, they would receive \$400?

A. No, sir; I never did.

Q. And did you tell him that you afterwards became interested with Mr. Kinkaid in the business of locating people under such an arrangement?

(Deposition of John I. Wells.)

A. No, sir.

Q. And did you tell him that you and Mr. Kinkaid continued that business until it used up all of your available funds? A. No, sir; I did not.

Q. Did you tell Mr. Wright that Governor Steunenberg came and wanted to get in on the deal on the ground floor? A. No, sir; I did not.

Q. And did you tell him at any conversation that you told Governor Steunenberg that in order for him to come in he would have to put up enough money to equal the money that you and Mr. Kinkaid had spent, and that the Governor gave you \$11,000 to get in?

A. I never had any such conversation with Mr. Wright, or anyone else.

Q. Did Governor Steunenberg ever, at any time, give you or Mr. Kinkaid any sum for any interest in any timber lands in Boise Basin?

A. No, sir.

Q. Did you tell Mr. Wright at that, or any other conversation, speaking of you and Mr. Kinkaid, that your plan of making money out of it, was to turn these claims over to some big concern, some big lumber company at a profit, and that the three of you were to share equally in the profits?

A. No, sir.

Q. Did you tell him that your part of the profits was about \$13,000, but that in handling the money for these people you had lost about \$9,000 and they were trying to hold that out of your share?

A. No, sir.

(Deposition of John I. Wells.)

Q. And then did you tell him in answer to any inquiry as to how you lost the money,—“I kept no books and don't know where in hell this has gone, except I paid out something like \$4,000 to these locators who have got cold feet and have skipped the country before they proved up on their claims.”

A. I never told Wright any such thing.

Q. Did you tell Mr. Wright at that, or any other conversation that whenever you wanted money you went to the First National Bank and if the officials of the bank didn't turn over any money to you, you communicated with Governor Steunenberg, and in a few days you would get the money?

A. No, sir; I did not.

Q. Did you tell Mr. Wright in answer to his inquiry as to the amounts you would handle, that you had handled about \$248,000?

A. No, sir.

Q. Did you tell Mr. Wright that the people who were supplying the money you handled was the Barber Lumber Company?

A. No, sir.

Q. Did you tell Mr. Wright at that or any other conversation, that the arrangement with the entrymen was that you were to pay \$400 to each one upon final proof, and that you also advanced some money for current expenses?

A. I did not.

Q. Did you have any similar conversation to the one I have described, with Mr. Wright?

A. No, sir; I did not; none whatever.

Q. Did you state to Mr. Wright the substance of what I have recited, or anything similar to it?

A. No, sir.

(Deposition of John I. Wells.)

Q. Now, after Governor Steunenbergh had had this talk with Mr. Wright with reference to your account, when did you next, or how long afterwards did you next talk with Mr. Wright about it, or with Governor Steunenbergh?

A. Why, it was some three or four months, I believe. I met Mr. Steunenbergh at the Idanha Hotel in Boise City, and he says to me, he says, "John, before you pay Mr. Wright that grocery bill, I want to see you." And I promised that when I got ready to pay Wright, I would let him know.

Q. State what next you did.

A. And later, some two or three weeks later, I got the money to pay Wright, and the Governor was not in Boise, so I held that money some three or four days until the Governor arrived in Boise, and I went to the hotel to him and told him that I had the money to pay Wright, but he said, "All right, don't pay him until this afternoon; I want to see you first." And in the afternoon I was going back to the hotel to see the Governor and I met him on the corner near Fletcher & Stein's hardware store, and I says, "Now,"—we spoke about this bill and he says,— "Bring him up to Frank Martin's office, I am going up there and bring him up there." So I went to get Wright and asked him to go to Frank Martin's office. We went into Martin's office, the Governor and Frank Martin was sitting in his office room, and he says "Come in here, I want to see you fellows," and we went into Mr. Martin's private office, and he says to Mr. Wright, "Mr. Wells *tell* me that he has the

(Deposition of John I. Wells.)

money to pay that bill, and I asked him before he paid it to let me know; now, I have got a little statement here that I want you to sign," and Wright signed that statement, and I paid him, and he gave me a receipt in full up to date.

Q. Was the statement he signed for Governor Steunenberg, the receipt he gave you, or was that a separate instrument?

A. A separate instrument.

Q. I show you a document dated, "Boise, Idaho, June 17, 1905," purporting to be signed by "The American Grocery Company, Junius Wright, Proprietor," marked in writing "Exhibit No. 1 Junius Wright," is that the receipt that Mr. Wright gave you at that time?

A. Yes, sir.

Mr. BUNDY.—I herewith offer this receipt in evidence in connection with Mr. Wells' testimony, and will read it into the record:

On the billhead of the Union Grocery Company, "Junius Wright, Proprietor, between Idanha Hotel and G. Rees store, dated Boise, June 17, 1905,"

"\$437.50, Received of John I. Wells, Four Hundred Thirty-seven and 80/100 Dollars (\$437.80) payment in full of account to date. (Signed) American Grocery Company, Junius Wright, Prop."

Mr. KEIGWIN.—What is the purpose of this paper, for what purpose is it offered?

Mr. BUNDY.—To show the facts relative to the settlement between Mr. Wells and Mr. Wright; to show that Mr. Wright's evidence on the subject is not correct or truthful, this document having been



(Deposition of John I. Wells.)

shown to Mr. Wright when he was on the witness stand and he having denied his signature to it.

Mr. KEIGWIN.—Is this the paper that was shown to Mr. Wright, without showing the signature?

Mr. BUNDY.—I showed him the signature.

Mr. KEIGWIN.—We object to it on the ground that it is immaterial, irrelevant and incompetent, and on the further ground that the paper has not been sufficiently identified by an exhibition of the paper as a whole to Mr. Wright.

Mr. BUNDY.—I will identify it further.

Q. (By Mr. BUNDY.) Mr. Wells, showing you now the receipt which you have testified to as signed, or purporting to be signed by Junius Wright for the American Grocery Company, I will ask you if you know whose signature that is attached to that receipt?

A. Junius Wright signed it in my presence.

Q. You saw him sign that identical paper?

A. Yes, sir.

Q. Did he ever give you any other or different receipt for the amount? A. No, sir.

Q. How long has that receipt been in your possession? A. Ever since the date it bears.

Q. Until when?

A. Until about the 14th of March, 1909.

Q. Then I telegraphed you from Portland to send the receipt there to me, did I not? A. Yes, sir.

Q. And you sent it pursuant to my request?

A. Yes, sir. I think I have the telegram—

Q. Who handed that money to Junius Wright?

(Deposition of John I. Wells.)

A. I did myself.

Q. Did you get that money from Governor Steunenberg?      A. No, sir.

Q. State as to whether or not in 1905, the date of this receipt, the entries in the Basin and Crooked River had all been made and final proof concluded, and your interest in that business had been closed?

A. I don't think that there was any timber vacant in that country up there at that time that had been opened for entry.

Q. At that time were you employed in any capacity by Governor Steunenberg?

A. No, sir.

Q. Or by the Barber Lumber Company?

A. No, sir.

Q. Or John Kinkaid?      A. No, sir.

Q. Or Mr. Pritchard?      A. No, sir.

Q. Or any of the defendants in this action?

A. No, sir.

Q. Did you go back to Junius Wright after the interview in Mr. Martin's office and tell him that he had been paid too much and you wanted part of the money back?      A. No, sir.

Q. You spoke of getting up parties to go up to the timber, Mr. Wells; what was the object of having them go up in parties, rather than singly and alone?

A. We adopted that plan for the reason that they could witness for one another, and, also share in the expenses, and in that way we could make the trip cheaper.

Q. Now, you spoke yesterday of asking people,

(Deposition of John I. Wells.)

or rustling people to make timber and stone entries. What interest did you have in inducing people to make timber and stone entries?

A. My location fee.

Q. Did you have any other interest in it?

A. No, sir, not at the time, except the ones that I loaned money to; I had an interest afterwards in collecting the money.

Q. Did you at the time of requesting people, or soliciting people to enter timber and stone claims, make any representations to them whatever as to the amount they could make out of it, or as to any person being ready to buy it?

A. No, sir, I did not, there was no one that I knew of to buy them in the vicinity where those locations were made, when they were made.

Q. At the time the Crooked River locations were made, did you know that the Barber Lumber Company, or John Kinkaid or any other person was going to be in the market to buy them?

A. No, sir, I did not.

Q. Did you have any conversation with any representative of the Barber Lumber Company, or Mr. Steunenbergh or with Mr. Kinkaid, or with any other person with reference to their becoming purchasers of the claims you had located, at the time the locations were made?

A. Not at that time; no sir. Afterwards I aided Dockery with information whereby he got a party out there to look over the Crooked River country with a view to buying it, and he came out and looked

(Deposition of John I. Wells.)

it over and turned the deal down.

Q. And who was the party which Dockery induced to look it over?

A. His name was Baker; I don't know his initials, but he is up at Saginaw, now, up in Minnesota.

Q. Did you know Norman H. Young?

A. Yes, sir.

Q. Do you recall the fact of your leaving some money with him for his deed?          A. Yes, sir.

Q. Will you state how that came about?

A. I was going up in the Boise Basin in some business interests of my own, and Mr. Pritchard asked me to buy Mr. Young's timber claim, and he gave me \$700. I took it up there and gave it to Young; there was no notary public up there except him, and he said he would execute it and send it down.

Q. Do you know anything more about it?

A. Nothing more than that.

Q. Mr. Wells, it is charged in the complaint in this action that you entered into an arrangement or agreement with the Barber Lumber Company, James T. Barber, Sumner G. Moon, William Sweet, John Kinkaid, Louis M. Pritchard, Patrick H. Downs, Albert E. Palmer, and Horace S. Rand for the purpose of defrauding the United States out of the amounts described in this complaint; did you have any arrangement of that kind, or similar kind?

A. Not of any kind; I had no intention of beating the United States out of anything.

Q. Did you ever have any arrangement with any

(Deposition of John I. Wells.)

of the gentlemen I have named with reference to lands in the State of Idaho, other than that you and Patrick would locate people on the ground?

A. No, sir.

Q. Have you testified about all of the arrangements you have had, in the order you made them, and your part in locating people on the claims?

A. As near as I can remember.

Q. Did you ever, at any time, solicit, request or induce any entrymen or entrywomen to testify falsely before the Land Office relative to the claims they entered?

A. No, sir, I never did.

Q. Do you know of any of the other defendants having done so?

A. No, sir.

Q. Did you at any time, alone, or in connection with Mr. Downs, procure or induce any entrymen or entrywomen to file upon timber lands in the State of Idaho for the benefit of any of the defendants in this action?

A. No, sir.

Q. Did you procure, induce or request any applicant to enter upon lands pursuant to any agreement by which they were to transfer, or turn over the lands they might acquire, to any persons, firm or corporation?

A. No, sir.

Q. Did you know to whom any entryman or entrywoman was going to sell their lands at the time you located them?

A. No, sir.

Q. Did you have such knowledge as to any entryman or entrywoman at the time you made a loan to them for Mr. Sweet?

A. No, sir.

Q. Do you know why Mr. Sweet did not make

(Deposition of John I. Wells.)

these loans directly himself?

A. No, unless it was because I was acquainted with the parties that had filed, and they were coming to me in regard to the loans and Sweet seemed to be willing to trust me to loan this money.

Q. There was no connection between you, or the firm of Wells and Downs, and these original entry-men who came out to the Basin from Minnesota, Messrs. Parris & Manning? A. No, sir.

Q. I understand they were the first persons who appeared in Boise for the purpose of locating people?

A. They were the first parties who succeeded in getting people to file on lands in the Boise Basin.

Q. They only stayed a short time, I understand?

A. Just about thirty days, and during that time they brought three or four different loads of people up there to view this timber, and about half of them filed on land, and the other half didn't like the timber and never filed, I learned afterwards.

Q. Now, you say it was assumed,—you heard that Parris and Manning made certain representations in the Basin with reference to prospective purchasers?

A. I heard that?

Q. State whether that was the general talk among the placer miners up in the Basin?

A. It was the talk, and newspaper reports were made to that effect. I think Manning was the dictator of those reports, he gave out the information.

Q. Now, did you at any time make any arrangements or have any business connections with Parris



(Deposition of John I. Wells.)

and Manning, or any other locators other than Patrick Downs?

A. No, sir. Except Snow; a bunch of applicants had come to me and wanted to know if I could locate them, and I told them that Downs was up there and that we could divide the location fee; outside of that, I had no arrangement.

Q. Were you ever employed by Frank Steunenberg in any capacity during the years 1901 up to 1905?

A. I believe that I made a trip up near Center-ville to look after a fire that had broke out up there for Frank Steunenberg for which he paid me. If there was any other employment, I don't recall it.

Q. Were you ever employed on a salary or by a commission with reference to any of the lands described in this complaint, by the Barber Lumber Company?

A. None other than I have already described, collecting the money.

Mr. BUNDY.—That is all.

Cross-examination.

(By Mr. GORDON.)

Q. Mr. Wells, you were present at all of the sessions of the taking of the testimony in this case at Boise, were you not?

A. Yes, sir, very near all of it.

Q. And you have been in consultation and conference with Mr. Bundy, the counsel of the Barber Lumber Co., concerning these cases, and the testimony of the various witnesses, have you not?

(Deposition of John I. Wells.)

A. We have talked about the case, yes, sir. I have been with Mr. Bundy when I was in the same town with him.

Q. And during the taking of the testimony of the various witnesses you discussed with Mr. Bundy the testimony of each witness?

A. Yes, I did to a certain extent.

Q. What is your occupation now, Mr. Wells?

A. Well, I have been—really I haven't any occupation, only as what you would call a curbstome real estate man.

Q. You haven't been in office?                      A. No, sir.

Q. Haven't got any trade?

A. No, sir, I have no trade.

Q. And how long has it been since you have been employed?

A. It has been about—outside of what I have already testified, I haven't been working for anyone for a salary or a commission since about the middle of August, 1901.

Q. 1901?                      A. Yes, sir.

Q. And at that time you were working in a mine, were you not?                      A. Yes, sir.

Q. As a laborer?                      A. Yes, sir.

Q. What were you paid for that service?

A. \$3.00 a day.

Q. And you have testified that at that time, or about that time, you were interested in a saloon?

A. Yes, sir.

Q. Where was that saloon?

A. Centerville.

(Deposition of John I. Wells.)

Q. And you were interested in it with your brother? A. Yes, sir.

Q. Harvey Wells? A. Yes, sir.

Q. And to what extent was that interest?

A. My brother wanted to buy the saloon, and he had about half enough money to buy it, and I put up the other half.

Q. How much was the other half?

A. It cost us \$600, \$300 for a license, and we had to put in the stock and pay some rent in advance.

Q. Is that saloon still in existence?

A. I don't think there is any saloon there, but the building is still there.

Q. You are not interested there now?

A. No, sir.

Q. Did you sell it out, or did it just naturally discontinue?

A. My brother made a little money there, and he paid me half of the profits until I left. I think it was in September; no, it was about December that he paid me half the profits and my money back.

Q. December of what year? A. 1901.

Q. Do you own any real estate?

A. At the present time I own an equity in my home in Boise City.

Q. And approximately, what is the home worth?

A. About five thousand.

Q. And how much is the equity?

A. It is probably worth—about \$2,000.

Q. What has been your purpose in attending the sessions of the taking of the testimony in this case?

(Deposition of John I. Wells.)

A. No purpose of my own; Mr. Bundy asked me and requested me to attend those sessions.

Q. You are not a lawyer, are you?

A. No, sir.

Q. Are you paid a salary or a fee or were you paid a salary or a fee for attending those sessions?

A. He paid me for my time.

Q. Who advised you that you were to be a witness in this case?

A. I think Mr. Kinkaid told me that I was expected to testify after I arrived in Los Angeles.

Q. And you came to Los Angeles in response to a telegram from Mr. Kinkaid?

A. Yes, sir. That is, I concluded that it was for me to come, it didn't say come, but he telegraphed what train he would be on at Reno, and I knew that you people would be here about the third, and when I bought my ticket I bought a round-trip ticket, and I figured if I went to Reno I would go to Los Angeles, anyway, I wanted to see the country, and it was just as cheap to buy it to Los Angeles as to San Francisco.

Q. Did you come by way of Frisco?

A. Yes, sir, that is, my ticket called for by way of Frisco, but I switched off at the Oakland Pier, I didn't go into Frisco.

Q. Didn't Mr. Bundy at any time during your conferences with him state that he expected you to be a witness?

A. No, he never said that he expected to put me on the stand at all; but he did infer, before he left

(Deposition of John I. Wells.)

Boise City that he might want me to come down to Los Angeles.

Q. How long was that before he left Boise City?

A. Just the day before, or maybe at the train.

Q. Do you remember when the timber in Boise Basin, Idaho, was first opened for entry?

A. In Township 7-5 it was surveyed the spring or summer that I landed in the Basin; I remember that distinctly, because the surveyors one morning before I got up, I was sleeping in a little tent, and a chain or something rattled against it, and I stuck my head out, and a surveying outfit was dragging their chain along.

Q. That was a Government Surveyors?

A. Yes, sir.

Q. When did you begin to locate people in the Boise Basin?      A. In the fall of 1901.

Q. And the persons that you located, were they the first persons that made entries in the Boise Basin?

A. No, sir, there had been a few before that. A few had been made by Downs & Snow, acting for Parris & Manning. I think Downs and Snow, and a fellow by the name of Hamilton, and a lady by the name of Julia Anderson, and a lady by the name of Thompson, and one or two others, had filed before I located anybody.

Q. That was five or six persons?

A. Yes, sir.

Q. And did I understand you to say that they had been located by Downs and Snow?

(Deposition of John I. Wells.)

A. Yes, and Manning. I understood that Manning brought them out there, also brought Downs and Snow, brought them up there to file on timber.

Q. Did you ever meet Mr. Manning?

A. I met Manning, I think once, and I think it was at the time that I first came down to Boise to investigate what the Timber and Stone Act really was.

Q. And did you go to Mr. Manning to make your inquiry?

A. No, I went to the Land Office, but I called on Mr. Manning at the Capital Hotel during that trip.

Q. Mr. Manning was a lumber or timber man from Minnesota, was he not?

A. I think he was from Minneapolis, he told me.

Q. And was he a lumber man?

A. He seemed to talk lumber pretty good, that is all I know about it.

Q. How many timber claims were entered in the Boise Basin prior to January, 1902?

A. Why, I think somewheres near fifty had been entered altogether.

Q. And had any one located entrymen other than what you have referred to as the firm of Downs & Wells?

A. Yes, sir, a gentleman by the name of Nelson, I met him once I think.

Q. Is that Joe Nelson or Charlie?

A. I think it was John.

Q. How many people had he located?

A. I can't recollect, but not over four or five.



(Deposition of John I. Wells.)

Q. That was four or five that was located by Mr. Nelson? A. Yes, sir.

Q. And then the four or six that were located by the Manning outfit? A. Yes, sir.

Q. Did anyone else locate anybody in the Basin?

A. Any time?

Q. Prior to 1902?

A. Not that I know of.

Q. Then you and Mr. Downs located about 40 persons prior to January 1st, 1902?

A. Yes, sir.

Q. Did you locate people in the Boise Basin after January 1st, 1902? A. Yes, sir.

Q. How many other persons did you locate in the Boise Basin in the year 1902?

A. I think all together, including the ones that we located in 1901, there were about 100, maybe 110 or 112. You see, Mr. Gordon, over at Idaho City there were some located in the summer of 1902, that we located, but that is away across the country, over in the 6-4, but it is in the Basin proper.

Q. Did you and Downs have any written partnership agreement or was it just a verbal agreement that you entered into? A. Just verbal.

Q. And you were to locate people and divide the profits?

A. Yes, sir, divide the location fee.

Q. Now, I understood you to say that from August, 1901, up until the first of January, 1903, you and Downs located upwards of 120 persons in that basin; is that correct?

(Deposition of John I. Wells.)

A. Well, we located a lot in the Crooked river country.

Q. I will change my question. You located about forty between August, 1901, and January 1, 1902?

A. Yes, sir.

Q. Just how many people did you locate in the Boise Basin during the year 1902, January 1st, 1902, until January, 1903?

A. I think somewheres about 120, 117 or 120.

Q. That would make 160 that you had located in the Boise Basin?

A. No, I mean all together including the 40, in the year 1901.

Q. Then from August, 1901, to January 1st, 1903, you had located how many in the Boise Basin?

A. I think somewheres about 120, all together.

Q. Now, during that time did you and Downs locate persons on timber claims in other sections of the country?

A. In the fall of 1902 we located lands in 7-8, 8-8 and 6-8.

Q. That is what you call the Crooked river country? A. Yes, sir.

Q. And prior to January, 1903, how many persons did you locate in the Crooked river country?

A. Between 85 and 95, I think.

Q. And how much did you get for locating each of those claims from the entrymen?

A. I got \$12.50.

Q. And Downs got \$12.50? A. Yes, sir.

Q. Did you have any other business at that time?

(Deposition of John I. Wells.)

A. Well, I was pretty busy at that time. I was mining a little, getting some assaying done, and helping fellows sell their mining property.

Q. Were you making any money at that time?

A. Yes, sir; I made a little money at that time selling mining property.

Q. What mining property did you sell from August, 1901, to January 1st, 1903?

A. I sold my claims in Lewis Gulch in the fall of 1901, and I think in the fall of 1902, maybe in the spring of 1903, I sold the Twin Sisters mine.

Q. Did you own the Twin Sisters mine?

A. No, sir; I had an option on it.

Q. How much did you clear on that?

A. \$1,000.

Q. And how much did you clear out of your other claim?

A. \$600; it was just a prospect, for my share I got that; I had a partner in that with me, Mr. Glass.

Q. Thaddius N. Glass?

A. Yes; I located him in and sold him out.

Q. And that \$1,600 that you made, didn't have to be divided with Mr. Glass?

A. No, that was my own money; afterwards Ingles had a partner and he wanted to get rid of him, and he told me what I could buy it for, and I bought for a couple hundred less, and so I made, counting it all together, I made \$1200.

Q. This firm that you spoke of was never known as the firm of Wells and Downs?

A. Everybody knew that me and Downs were

(Deposition of John I. Wells.)

partners in the locating business that knew anything about it at all.

Q. The business was run under your name, was it not?

A. We didn't have to do any banking business or anything of that kind together because Downs when he came down out of the hills, I generally had his money ready for him and gave it to him.

Q. You didn't do any banking business at all?

A. I did have a bank account at the Bank of Commerce for probably two years.

Q. At about this time 1901 and 1902?

A. I think so; I think it was in 1902 and 1901.

Q. None of these transactions that you conducted in reference to the timber claims were carried on through the banks, were they?

A. Nothing that I did.

Q. You never gave your check?

A. No, sir; only I might have had a bank account in the Bank of Commerce, and paid my individual bills with checks.

Q. I mean any of the money you loaned persons to prove up with, or anything with reference to timber claims, you never did it by checks?

A. No, sir.

Q. You and Downs didn't have any letterheads or stationery with the firm name on it?

A. No, sir.

Q. You had stationery of your own? "John I. Wells?"

A. Yes, room 8, Park Building.

Q. Now, you say that sometime in 1901 you

(Deposition of John I. Wells.)

learned from the Boise papers that a railroad was going to be built somewhere in Idaho, is that correct?

A. The papers stated that there was a surveying party surveying from Boise up to the mouth of Grimes creek and Moores, which I found out afterwards was true.

Q. And there had just been a survey made?

A. They started boosting it when they first started.

Q. Who started to boost it?

A. The papers.

Q. In what manner did they boost it?

A. They talked about the railroad going up and tapping the basin country and there was a good deal of talk of it being a great benefit to Boise City and the surrounding country.

Q. Has a railroad ever been built there?

A. No, sir.

Q. Has anyone ever started to build up there?

A. There is a railroad graded about 12 miles from Boise City up.

Q. Up to where?

A. Probably four miles to the Government dam.

Q. And how far is that from the Boise Basin?

A. It is about 12 miles, that makes it about 30 miles yet to Boise Basin.

Q. And there is a chute to the Government dam a little further on?      A. Yes.

Q. And do you know what the purpose of that railroad was?

(Deposition of John I. Wells.)

A. It was supposed to be a Butte and Boise railroad.

Q. You spoke of some company being incorporated; did I understand you to say that?

A. Yes, the papers stated that; that is where I got my information.

Q. When did the papers make that statement?

A. Along in about July or August.

Q. Of 1901? A. Yes, sir.

Q. And did it say who composed this company?

A. Yes, sir; it mentioned their names.

Q. Who did it mention?

A. E. H. Beggs, E. E. Garrett, Ormand M. Ruick, Surveyor Stevenson and I think James Pinney.

Q. What did it say that these people had done?

A. That they had got together and organized a company and put up money, enough for this survey, and I afterwards rode down to Idaho City with Mr. Beggs and he said that he was interested in the railroad, and that looked good to me as he owned the stage line and had operated it for years, and I asked him if that would not interfere with the stage business and he said there was always a stage line to run out and he said that a new country was always better staging.

Q. You said you met these gentlemen who made the survey at your brother's place of business every day? A. Oh, no, not every day.

Q. You saw them often?

A. Yes, frequently if they were in in the evening; every evening that they were in.



(Deposition of John I. Wells.)

Q. Who were these gentlemen who made this survey, that you met at your brother's place of business?

A. Harry Curtis was making the survey; he was running lines in this timber; Downs and Snow were timber cruisers.

Q. I am speaking about making the survey for the railroad.

A. Oh, I never met anybody making the survey for the railroad.

Q. Did you ever see anybody making that survey for the railroad? A. No, sir.

Q. And you were up in that country off and on for a number of years?

A. I was above the—Centerville is about 18 miles above the mouth of Grimes creek, and that is where I lived ever since April, 1895, until I moved to Boise in the spring of 1902.

Q. You made a filing in the basin in September, 1901, didn't you? A. Yes, sir.

Q. For yourself? A. Yes, sir.

Q. And your wife made one at the same time?

A. Yes, sir.

Q. Your wife is Jennie E. Wells?

A. Yes, sir.

Q. And you sold that claim, did you not?

A. I sold my claim, yes, sir.

Q. Has a patent ever been issued on that claim?

A. Not up until the time I sold it.

Q. And how many deeds did you make to that claim? A. I made one.

Q. Never made another? A. No, sir.

(Deposition of John I. Wells.)

Q. Are you quite sure about that?

A. Yes, sir. I am sure of it; I was held up for one year after the land office at Boise had ordered the issuance of my final receipt. It was not issued until the year afterwards; I found that out.

Q. My inquiry was directed as to whether or not you made a deed to A. E. Palmer for the land that you filed on in 1904?

A. No, sir, I never did.

Q. Nor to anybody else?

A. No, sir, none except the first deed.

Q. And the first deed that you made was the one that you made to Palmer at the request of Mr. Chapman of the Barber Lumber Company?

A. I never made a deed to Palmer.

Q. The deed was to the Barber Lumber Company?      A. Yes, sir.

Q. That is the only deed that you ever made at any time for the piece of property that you filed on?

A. Yes, sir; that is the only deed.

Q. Do you remember when you made final proof?

A. Yes, about when.

Q. When was that?      A. December 12th.

Q. 1901?

A. 1901; two or three days after the date set by the land office for me to make proof.

Q. Do you remember why you didn't make proof on the date?

A. I didn't have any witness; I didn't have Granger down there.

Q. And you borrowed all or part of the money

(Deposition of John I. Wells.)

by which you made your final proof from William Sweet? A. Yes, sir.

Q. About \$130? A. About that.

Q. And you made your proof when Mr. Granger made his? A. Yes.

Q. And you loaned him part of the money with which he made his proof? A. Yes, sir.

Q. That was your own money?

A. Yes, and I got the money from Sweet that I needed. That is the way that I remember it now, I don't know, but I borrowed the money from Sweet when I made proof.

Q. You mean that it didn't make much difference if you had to borrow it, whether you loaned him the money you borrowed, or not? A. Yes, sir.

Q. How much did you loan Arthur Anderson, to make his final proof?

A. I think it was \$250.

Q. Where did you get the money that you loaned Anderson?

A. That was my own money that I loaned; I made it by locating people and selling my prospect.

Q. Did you ever go to Mr. Kinkaid with Anderson and Nugent? A. No, sir.

Q. Did you ever meet them there?

A. No, sir, I don't think I ever did.

Q. Are you sure of that? A. Yes, sir.

Q. Did you have anything to do with the contests over the claims of Arthur Anderson, Albert P. Nugent, James T. Ball and Harvey H. Wells?

A. Yes, sir; I aided them all I could for the rea-

(Deposition of John I. Wells.)

son that I had something like \$800 or \$900 invested with them.

Q. Did you secure counsel for them when their claims were held up?

A. Yes, sir; me and my brother telephoned backwards and forwards and I think I wrote him, and my brother told me to do what I could down there and I done what I could, and I told him to have the others go to the counsel that I recommended.

Q. Did you recommend Harry Worthman?

A. No.

Q. Did you recommend Frank Martin?

A. No, sir.

Q. Did you employ Frank Martin for them?

A. No, sir.

Q. Did you ever have any conversation with Frank Martin regarding employment?

A. When they came down,—that contest was set for a certain time, and when they came down to make their proof Worthman was busy and he could not take it up and so he got Frank Martin, and I understand he said he would handle the case. Before Frank Martin took the case, he took one of those fellows in his office, and made an agreement with them that if he won the case they were to pay him so much money.

Q. Did you see them in his office?

A. Yes, I was with them.

Q. Did you take them there?                      A. Yes.

Q. Why did you take them to Mr. Martin's office?

A. Mr. Worthman said Mr. Martin had the case.

(Deposition of John I. Wells.)

Q. You were present in court when Arthur Anderson testified in this case? A. Yes, sir.

Q. And you heard some letters read to Arthur Anderson purporting to be written him by you?

A. I don't recall hearing any letters read.

Q. You remember writing Anderson those letters with reference to the employment of counsel for those contest cases?

A. No, as I understand it, I wrote to my brother and told him to see Anderson.

Q. Don't you remember writing to Anderson?

A. I don't remember.

Q. Do you remember writing to Nugent?

A. Yes, sir, at Silver City.

Q. And do you remember telling Nugent to say nothing about that to anybody, to destroy the letter?

A. I think so.

Q. What was your purpose in telling him that?

A. I had loaned him some money and I didn't want to lose it.

Q. How did you think that would make you lose your money?

A. There was an Examiner, as I understood it, had interviewed Nugent and Nugent had told him that he had borrowed the money from me I believe, and a whole lot of other stuff.

Q. Where did you hear that?

A. From people in the Basin; my brother got the information up there; and several others talked about it.

Q. At that time you thought it was illegal for

(Deposition of John I. Wells.)

people to make final proof with money that was not their own?      A. No, sir.

Q. You had taken advice on that subject?

A. No, sir. I have lived on the frontier all my life, and I have never known the time that a man could not borrow money to commute.

Q. Did you think it was illegal for you to loan people money to make final proof if you had located those people yourself?      A. No.

Q. Did Mr. Kinkaid advise you to that effect?

A. He advised me that I had a perfect right to loan them the money. He said, "You are a locator," and he says, "The inference will be drawn if anything ever comes up in this thing that you was interested in this buying and purchasing of claims," he said that everybody would *a* running after me to borrow money.

Q. Mr. Kinkaid advised you not to loan money to make final proof, if you had located the people, didn't he?

A. No; he said it might—the inference might be drawn because I had located them, that it was illegal.

Q. Who said that, Kinkaid?      A. Yes.

Q. Mr. John Kinkaid?      A. Yes.

Q. The gentleman that is now present here?

A. Yes, sir.

Q. Didn't I understand you to say yesterday that Mr. Kinkaid told you not to lend money to persons that you had located if they were going to use that money to make final proof, but that you did loan



(Deposition of John I. Wells.)

money to them?

A. I loaned two fellows money, and afterwards loaned a whole lot of money to make final proof.

Q. When did you meet William Sweet?

A. First time?

Q. Yes.

A. I met him sometime during the summer of 1895 when I first went into the Basin.

Q. And the first dealings you ever had with him in reference to timber claims were when you borrowed the money to make your proof, or a loan to Mr. Granger that you have referred to?

A. Yes, sir.

Q. And that was in December, 1901?

A. Yes, sir.

Q. And when did you make the arrangements with him by which you could get the money from him to loan other persons who desired to make final proof?

A. I think it was in the early part of January, 1902.

Q. And I understood you to say that you thought Sweet's purpose in loaning that money was that he eventually expected to acquire it and he had some lumber company who might want to purchase it?

A. Yes, sir, I believe I said something to that effect.

Q. Sweet never got any interest out of this money, did he?      A. No, sir.

Q. There never was any agreement with any of the persons that borrowed the money that they were

(Deposition of John I. Wells.)

to pay interest, was there?           A. No, sir.

Q. Now, the forty people that you located prior to January, 1902, did I understand you to say that you only assisted two of them in making the final proof?

A. Oh, no, I assisted pretty nearly all of them that were located in the spring of 1901.

Q. And where did you get the money to do that?

A. From Sweet, except the Nugent and Anderson claims, and then I took my money.

Q. I understood you to say that you didn't make an agreement with Sweet until January, 1902?

A. Those people that were located in the fall of 1901 didn't prove up until after January.

Q. And now do you remember the names of those 40 people whom you located, and to whom you loaned money to make final proof?

A. I could not recall all of them.

Q. Will you make a try at some of them?

A. Yes, I can name some of them.

Q. I will ask you to look at the bill filed in this case and over towards the end of it you will find the list of the entrymen, and see that, if by reading that over, you can name the persons to whom you loaned money to assist them in acquiring title to the claims they located.

A. I will do the best I can. (Reading bill.) Dean West, Eliza B. West, Charles Nelson, William Pearson, Margaret Pearson, Lelia Lee, Arthur E. Brockhart, Gustave A. Link, Mary Link, Harry L. Kline, Louis Nibbler, Edward Brisban, William W.

(Deposition of John I. Wells.)

Abrams, a part of Homer C. Granger's, Louis K. Burns.

Q. And Dora Burns?

A. Yes, I loaned her money. I believe that I loaned W. L. Harrison part of his money either before or after he made proof.

Q. Do you remember how much?

A. Something like \$200.00, I don't know exactly. Charles W. Ballentyne, Lettie S. Stevenson, Martin S. Stevenson, Arthur Gillan, Samuel Greig, and Sarah Greig, Ery A. Wilmot, and I think I loaned Wilber F. Wilson part or all of his money. Sedgwick Hoover, John E. Hobbs, Mary Thompson; I think that is all.

Adjourned at 2 P. M.

At two o'clock, met pursuant to adjournment. Counsel for parties being present, whereupon Mr. John I. Wells proceeded to testify as follows:

(By Mr. GORDON.)

Q. Now, Mr. Wells, I think the question I asked you just before recess was directed to the persons you had furnished with money and who you had located in 1901; did your answer or the persons that you named apply to entries that were made in 1901 or all that were included in the bill?

A. All that were included in the bill. All the names that I could recall.

Q. And as for the rest in that bill, other than those you have named, you never loaned any of your money or gave any of your money as a loan, or in any other way to assist them in acquiring this land,

(Deposition of John I. Wells.)

or the timber land that either or any of them located on; is that correct?

A. To the best of my memory, that is correct.

Q. Do you remember the Joplin boys?

A. Yes, sir.

Q. Did you ever loan them any money?

A. I don't think so.

Q. Are you sure of that?

A. At the present time, yes, sir.

Q. Ever loan Mrs. Sonora Joplin any money?

A. No, sir, not to the best of my knowledge at this time.

Q. Now, tell us what you thought the land on which you located these people was worth?

A. I think it was worth about 50 cents per thousand at the time I located them. I am not speaking of the Basin entries.

Q. And you base that on what?

A. Well, some of the State land had sold for that.

Q. And you used the expression that you thought "our land was just as valuable as theirs?"

A. Yes.

Q. And you used the expression,—“our,” meaning that you and Downs had cruised, is that correct?

A. I mean the ones that I had found and when I said “ours” I meant all the entrymen that had filed, and I counted my own claim and my wife's.

Q. I understood you to say that when you located these people that you didn't intend to buy the claims that you had no funds with which to buy them; is

(Deposition of John I. Wells.)

that correct? A. Yes, sir, that is correct.

Q. And that you never told anybody what you thought these claims were worth?

A. Well, I believe in order to encourage them to file that I told them that I thought it ought to bring 50 cents per thousand.

Q. And you knew of no market at that time?

A. No, sir.

Q. You gave as a reason for making your arrangements with Sweet to borrow money for these entrymen, that you felt under some obligations because you had had them locate, is that correct?

A. Yes, sir.

Q. And that some of them had threatened to come back on you?

A. There was talk of that; they felt as though I had beat them out of that much money, and that the land would never be salable and that they didn't feel like putting their money into it, but if they could borrow the money, why they would take a chance to prove up.

Q. In other words, then, if it was not good they didn't intend to pay the money that they had borrowed?

A. No, I didn't understand it that way; they thought if they could borrow the money the land would be good for it, and let it rest at that, and if it did get more valuable they would sell it and make some money out of it.

Q. Did the firm of Downs and Wells ever receive a location fee from Harry Kline?

A. No, sir; they did not.

(Deposition of John I. Wells.)

Q. Did you ever collect \$25 from Harry Kline?

A. Yes, sir.

Q. What for?

A. For the use of money that I loaned him; he also paid me \$5.00 for the use of \$50.00 that he borrowed.

Q. How much money did you loan him?

A. I loaned him \$400, I think.

Q. And whose money was that?

A. Sweet's money.

Q. And when did you charge him that? After he had sold his claim?

A. At the time he sold his claim.

Q. Were you at all alarmed at those threats that you had heard made that they might come back on you for the \$25?

A. It was not so much that I was alarmed about hearing that, but it was that it would interfere with the locating the balance of that country, for instance, if 35 or 40 had filed on land and failed to make final proof, why they would think there was something wrong, and no more would locate.

Q. When did you say you first met Governor Frank Steunenberg with reference to these timber claims?

A. I think I met him at the Idenha Hotel.

Q. When? A. About the first of June.

Q. What year? A. 1902.

Q. And was that the first business transaction you ever had with Mr. Stuenberg?

A. Yes, sir.



(Deposition of John I. Wells.)

Q. I notice in the bank statement in this stipulation, and item of May 12, 1902, amount \$20.00 of John I. Wells, check drawn by Mr. Stuenberg Frank Stuenberg; do you remember receiving that check? A. No, sir, I do not remember.

Q. Do you know what that check was for?

A. I remember of a check of \$18.00.

Q. I show you a check on the Commercial Bank, dated May 15th, 1902, to the order of John I. Wells, signed Frank Stuenberg, and ask you if you endorsed that check, and if that is your signature, and whether you received the \$20.00 in payment of it? (Showing witness check.)

A. I must have gotten \$20.00 for it.

Q. That is your signature?

A. Yes, sir; it might have been for examination, or something in regard to plats, or something of that kind.

Q. I notice here an item, dated April 19th, 1902, the statement shows to John I. Wells for account of Kinkaid, \$825, "no check, not on bank statement." Do you remember anything about a check of that kind?

A. I don't remember of ever getting a check for \$225.

Q. The amount *if* \$825.

A. I don't remember getting that from Frank Stuenberg at no time.

Mr. GORDON.—I offer in evidence check dated May 15th, 1902, which is for \$20.00 and identified by the witness John I. Wells, marked "Complainant's

(Deposition of John I. Wells.)

Exhibit John I. Well, No. 1."

WITNESS.—(Continuing.) I believe I recall that check; I received it in a letter and I ain't right sure but what I have got the letter that that check was sent to me in, and I think it was to pay Davis for some work that he had done, and they mailed it to me.

Q. Do you remember that the only timber claim that you bought was from a man by the name of John J. Keane?      A. Yes, sir.

Q. Was Mr. Keane a bar-tender at that time?

A. No, sir.

Q. He was when he located?

A. Yes, when he filed on the land.

Q. And now when was it that you bought this claim from Keane?

A. It was long before June.

Q. Of what year?      A. 1902.

Q. How much before June?

A. Well, probably it might have been a couple of weeks and it might have been—it was not much more than a couple of weeks.

Q. And had you loaned him the money with which to make proof?      A. Yes, sir.

Q. You loaned him four hundred and some odd dollars?      A. Yes, sir.

Q. And that was not in part payment of the sale of that timber?

A. Not at that time that I loaned it to him, no, sir.

Q. And there was no agreement or understanding that he was to subsequently convey it to you, was

(Deposition of John I. Wells.)

there? A. No, sir.

Q. And how much above what you loaned him, did you pay for this timber claim?

A. Why, I don't know exactly, but it was something like \$237.50 I think; it might have been \$250, it might have been less.

Q. And as I understand it, he made out a deed to you conveying it to you fee simple?

A. Yes, sir.

Q. And you bought that for yourself?

A. Yes, sir.

Q. Not as agent for anybody else?

A. No, sir.

Q. And how long after that was it that you sold it to Mr. Stunenberg?

A. It was quite a while before I got the value of that claim, or more than I had put in of Sweet's money. The first time I ever talked with Stunenberg I told him in a joshing way that I had bought a timber claim and I asked him what it was worth and he says, "Is that one of the claims that Sweet had loaned the money through you to make final proof?" and I told him it was, and in a day or two afterwards Stunenberg came to my office and he asked me to look after those matters; he was paying \$800 for those claims, and I expected to get \$800 for the claim; after I had collected all this money of Sweet's we had a settlement and I wanted a little more money for waiting so long for my money, so he agreed to pay me \$412.50, that would make \$800 for the claim.

(Deposition of John I. Wells.)

Q. Was that the first he had ever paid you on account of that claim?

A. That was the first money that he ever paid me on account of that claim; he had the deed, I turned that over to him when he was in my office.

Q. You just handed it to him?

A. Yes, and he said he would straighten it up afterwards.

Q. How long after that was it that he asked you to go to Keane and get another deed?

A. Probably a year and a half.

Q. He didn't ask you to make a deed, did he?

A. A deed to him?

Q. Yes.           A. No, sir.

Q. Now, do you remember on April 28th, 1903, of Mr. Stunenberg giving you a check for \$1600 for two claims on the Crooked River?

A. No, sir, I do not.

Q. A check for \$1600 for two titles on Crooked River?

A. I don't remember of ever getting such a check.

Q. Would you know what they were for if you should see the checks?

A. No, sir, I would not.

Q. Do you remember on June 13th, 1904, whether John Kinkaid gave you a check for \$250 or whether he paid you \$250, as part payment on your timber claim?

A. No, sir, I don't remember of getting anything as part payment on my timber claim.

(Deposition of John I. Wells.)

Q. Did John Kinkaid on June 12th, 1904, give you \$250 for anything?

A. I don't remember whether he did or not; I remember that along about that time Mr. Kinkaid and I were having different deals together, but I don't remember of this item.

Q. Do you remember ten days later, whether on June 23d, 1904, Louis M. Pritchard paid you \$162.50?      A. June 23d, 1904?

Q. June 23d, 1904?

A. No, sir, I don't recall him ever paying me that unless it was through some mining turn or other. Pritchard done a great deal of work for me in making our options and contracts in the mining business, but I don't recall any such money in the timber business.

Q. Do you recall on August 31st, 1904, of Frank Stunenberg giving you a check for \$150?

A. I believe I do.

Q. What was it for?

A. It was for outfitting on a trip into the Deadwood Basin. I got him interested in the Mary Blue mine in the Deadwood basin, and I made a trip in there at that time; I made three trips into the Deadwood basin that summer.

Q. Didn't you get \$150 just a month before that, July 31st, 1904?      A. I might of.

Q. Don't you remember it?

A. No, I don't remember that particular item.

Q. Do you know Leon S. Simpson?

A. Yes, sir.

(Deposition of John I. Wells.)

Q. Do you remember of selling him a relinquishment at the suggestion of Frank Martin, Ex-attorney General?      A. No, sir.

Q. Did you ever tell him that Mr. Martin had a claim to sell and that he could get a relinquishment from him?

A. Yes, sir; he had spoken to me two or three times about getting a timber claim and I told him the first chance I would let him know; there had been a hearing on in the land office, and they had 30 days; the claims had not been canceled, they had 30 days to show cause why they should not be canceled or something to that effect. Mr. Martin had the notice, and me and him talked it over and I talked it over for the fellows that were interested and I was interested in a way myself, and Mr. Martin suggested that he had not got any pay for what he had done and there was no use in carrying it any further, but if he could get a relinquishment from the boys for his services, that he would still continue the suit, and try and get their money back. Mr. Martin and I went up to Centerville with my team and we saw the boys up there.

Q. Who were the boys?      A. Al Wells—

Q. Harvey H. Wells?

A. Yes, sir, and Ed Hunter, Jim Ball, Arthur Anderson, and I assisted Mr. Martin in getting those relinquishments. Mr. Martin filed some of his people, three or more relatives of his on those claims, and also my friend Simpson.

Q. Do you remember whose claim Simpson got?



(Deposition of John I. Wells.)

A. I do not.

Q. It was one of these four? A. Yes, sir.

Q. Did you get paid anything for your services going up there? A. Yes.

Q. Who paid you? A. Mr. Martin.

Q. How much? A. \$100, I think.

Q. Was not that after the decision of the Secretary of the Interior? A. Yes, sir; I think so.

Q. And was that \$100 in part payment of your services in securing Simpson to file on that?

A. I suppose partly, but it was mostly for going up and aiding him get those relinquishments.

Q. You spoke of Brockhart, the father of Arthur Brockhart and Mrs. Lelia Stevenson; you say he was a Minister of the Gospel, was he? A. Yes, sir.

Q. And what was he doing at that time?

A. They were running a sort of a boarding-house.

Q. Boarding-house for horses?

A. No, for men.

Q. Wasn't he at that time sort of a stable boy for Stevenson? A. Mr. Brockhart?

Q. Yes. A. Not that I ever knew of.

Q. Do you know whether his name was Joshua?

A. We always called him Ed, so did his people in the East.

Q. And I understood you to say that he got \$812 from you?

A. Yes, I ain't sure that that is just the amount, but he got at least \$800, but I think it was a little over.

Q. And did he pay it back to you?

(Deposition of John I. Wells.)

A. Yes, sir.

Q. Himself? A. No, sir.

Q. Who paid it back to you?

A. Mr. Pritchard.

Q. And that was taken out when Arthur Brockhart sold his claim and when Mrs. Stevenson sold hers?

A. Yes, sir.

Q. I understood you to say that after you had a conversation with Junius Wright, that Governor Stunenberg told you not to pay that claim until later, that he wanted to talk with you about it?

A. That is not correct; I had no talk with Junius Wright just before Mr. Stunenberg told me when I got ready to pay Wright to let him know; he also said that Wright had been bothering him every time he came to town, and he was getting tired of it. Wright didn't bother me any after Mr. Stunenberg fixed it with him that time. He O. K.'d my bill and I think he told Mr. Wright, "Let Mr. Wells have what he wants, he is good for it," and Mr. Wright said, "Just as you say, Governor."

Q. Did you and Governor Stunenberg go to see Mr. Wright together?

A. We were both in the store, but I didn't go back, he just stepped back probably 20 feet.

Q. And you heard what they said?

A. Yes, I think I overheard what they said.

Q. But when the payment was made though, didn't I understand you to say that the Governor had been out of town and that you went to see him, and he said, "Don't pay him until this afternoon, and

(Deposition of John I. Wells.)

then bring him to Mr. Martin's office," or something to that effect?

A. I met him on the street; he was going up the street and I was going towards the Idenha Hotel, and I said, "I have the money to pay Wright," and he says, "Come down to the hotel sometime in the afternoon," I am not sure whether it was two or three o'clock, but it was after dinner.

Q. And you went down to see the Governor, did you? A. Yes, sir.

Q. And then what did he say to you?

A. He said, "I am just going up to Martin's office, and you can bring Wright up there, I want to talk with him."

Q. Did you go to Mr. Wright's store from the Idenha Hotel?

A. I was not at the hotel then, it was right in front of the entrance to the Masonic Block.

Q. It was not far from his store?

A. No, sir.

Q. Did you go to Mr. Wright's store from there?

A. Yes, sir.

Q. Did you get your receipt from Mr. Wright's store?

A. No, sir; Mr. Wright had the receipt written out by his stenographer; I told him that I wanted to pay it, but the Governor wanted him to come up to Mr. Martin's office, and me and him walked up to Frank Martin's office and when I paid him he signed the receipt.

Q. Who was in Frank Martin's office?

(Deposition of John I. Wells.)

A. No one except Governor Stunenberg and Frank Martin.

Q. Mr. Stunenberg was already there when you arrived?      A. Yes, sir.

Q. And didn't the three of you go into the private office of Mr. Martin, one of his suite of rooms, and was it there that the receipt was handed to you and the money paid to Mr. Wright?

A. It was there that I paid Wright the money, and he signed the receipt.

Q. Now, did he sign any other receipt there?

A. He signed some kind of a paper for the Governor.

Q. And who prepared that other paper?

A. I could not tell.

Q. Was it there when you got there?

A. Mr. Stunenberg had that.

Q. Do you know what Mr. Stunenberg did with that paper?      A. I do not.

Q. Did you read it?      A. I did not.

Q. Do you know whether it was in typewriting or was it in pen and ink?

A. I think it was in typewriting.

Q. Was it on plain paper or was it on a letter-head?

A. I could not say as to that and the contents of the letter,—I got a fair idea of what it meant by hearing the conversation between the Governor and Mr. Wright; I was in the same room.

Q. Do you know whether Mr. Martin was consulted about the paper that Mr. Stunenberg had Mr.

(Deposition of John I. Wells.)

Wright sign?

A. I don't know whether Mr. Martin knew anything about it or not.

Q. Did you leave Mr. Wright and the Governor there together?

A. No; me and Wright walked out together and left the Governor there.

Q. You say the conversation you heard between Wright and Frank Stunenberg at the time you and the Governor went to Mr. Wright's store was to the effect that the Governor said you were all right and to let you have whatever you wanted; is that correct?

A. Something to that effect.

Q. What did you gather from the conversation you heard between Mr. Stunenberg and Mr. Wright while at Mr. Martin's office concerning the contents of the second paper that Mr. Wright signed?

A. I think it was the first paper that Wright signed.

Q. It was the other paper than the receipt that you have presented here? A. Yes, sir.

Q. Then the other paper was signed before this receipt was given, is that it?

A. Yes, sir. I drew from their conversation that Wright was signing a paper that released Mr. Stunenberg from all obligations to Mr. Wright in any transaction whatever up to that time.

Q. And there was not anything that Governor Stunenberg had said that you heard between him and Mr. Wright the day that you and the Governor were at Mr. Wright's store by which the Governor

(Deposition of John I. Wells.)

bound himself to pay any of your debts?

A. No, sir. Mr. Wright seemed satisfied with what the Governor said and I found out that Mr. Wright was doing business through the Stunenberg Bank at Caldwell; he told me that just before I called the Governor in.

Q. Why didn't you go and pay Mr. Wright your bill yourself if it was your own money, and get your receipt, without having to go to the Governor about it?

A. The Governor asked me before—he had done me a favor, and standing off Wright for me, and he asked me before I paid that bill to let him know; he had a little business with Mr. Wright himself, and he said he was bothering him every time he came to town, and he was getting tired of it.

Q. Did you get the money that you paid Mr. Wright from Mr. Stunenberg?      A. I did not.

Q. Where did you get it?

A. From some of my transactions, and I have been trying to think, and I can't recall.

Q. Was it a hold-up between you and the Governor that in consideration of you paying a bill that you owed Mr. Wright, that Mr. Wright would release Mr. Stunenberg from some obligation that was not connected with you at all?

A. The way I understood it Wright was trying to hold up Stunenberg.

Q. For what?

A. For favors or something of that kind; I don't know what it was.



(Deposition of John I. Wells.)

Q. And that by reason of you paying a bill that you owed Mr. Wright, that would release Mr. Stunenberg from something that Wright held over him, in which you were not connected?

A. No, I didn't understand it that way. I understood that Mr. Wright had bothered the Governor so much about my bill because he told him that I was all right, that the Governor was getting tired of it; that is the way I understood it.

Q. Do you remember what month this was?

A. I don't remember now.

Q. It was in the summer of 1905?

A. Yes, sir; I think so.

Q. Do you know where that other paper is that Mr. Wright signed in Mr. Martin's office?

A. No, sir.

Q. Did you see what the Governor did with it?

A. He took it with him, he took it and doubled it up and I think put it in his pocket.

Q. And you and Mr. Wright went out, as I understand, and left the Governor at Mr. Martin's office?

A. Yes, sir. Mr. Stunenberg thanked him and he was very kindly towards Mr. Wright, and we walked out together and in going down the street I informed Wright that our business transactions were over.

Q. Did you ever deal with him after that?

A. No, sir.

Q. And the bill was \$437.80?

A. Yes, sir; I think so.

Q. Do you remember how much money you han-

(Deposition of John I. Wells.)

dled for these timber claims?

A. Not exactly, but it was near \$12,000.

Q. You mean for Mr. Sweet?

A. I mean for anybody.

Q. For everybody?

A. Yes; the money that I handled for Sweet amounted to about \$12,000.

Q. How much did you handle all together?

A. I handled all I got, all the location money that Downs and I had gotten I handled, practically all of it, and I also handled some of the Sweet money twice.

Q. You would collect it and then loan it out again?

A. No, I loaned it in the first place, and then I collected it back.

Q. Now, did you lose any of those short loans that you made?      A. Yes, sir.

Q. How many of them?

A. About four, I guess.

Q. Who were the four?

A. William Williams and his wife, I counted them two; and Mrs. Briggs and Mrs. Burns.

Q. They are the only ones?

A. The only ones that I can recall.

Q. So, that in all you only lost about \$1600, is that correct?

A. A little more than that; the Anderson and Nugent; Nugent got \$550 of me, and Anderson got \$387. I think. Mrs. Burns borrowed \$50 after she made the final proof that I never got back.

Q. Mr. Wells, have you in the last year or two

(Deposition of John I. Wells.)

gone to any of the entrymen named in this bill, and inquired of them as to what they were going to testify to in any trial? A. No, sir.

Q. Were you in court when some of the witnesses testified that you had come to them and asked them to make a statement of what they would testify to?

A. I don't think so; no, sir.

Q. Did you keep a book account of the money that you advanced to these people? A. Yes, sir.

Q. Have you that book account with you?

A. No, sir.

Q. Do you know when Mr. Sweet sold out, got out of this business?

A. About sometime in the fore part of April, 1902.

Q. Now, where was it, and when was it that you had your talk with Mr. Sweet about collecting this money and being allowed what you could make out of it?

A. I never had such a talk with him, about collecting anything for him.

Q. Who did you collect it for?

A. I was collecting this for Mr. Stunenberg when I commenced collecting it.

Q. Mr. Stunenberg was buying all the interest that Mr. Sweet had in it, whether it was title, or whether it was a loan?

A. I don't know anything about the deal between Stunenberg and Sweet; I know that Sweet came to me and he told me that he had sold out; that he did not make what he wanted to make and he said, "You

(Deposition of John I. Wells.)

loaned this money of his, you collect it in and probably get something for your trouble."

Q. Did he tell you to turn it over to Mr. Stunenberg? A. No, sir.

Q. Who told you to turn it over to Mr. Stunenberg? A. Stunenberg, himself.

Q. Now, you and Downs entered into a partnership in August, 1901, or along in the summer of 1901, is that correct?

A. No, it was the latter part of September, or fore part of October, 1901, that me and Downs entered into a partnership.

Q. And how long did that partnership continue?

A. Until the spring of 1903.

Q. What part of the spring?

A. About June, I believe.

Q. And why did you dissolve?

A. There was no more timber to locate.

Q. And then you resumed your partnership later, did you not?

A. Oh, well; if we heard of any timber we got out to rustle a party, and I would send Downs up.

Q. I understood you to say that later in the last two or three years, you and Downs had located a number of people, and had gotten \$125 for each claim he located.

A. Yes, sir; we located a number of people in 5-3 and 6-3, and I want to change the answer to the question Mr. Bundy asked me regarding locating in the basin. I believe the question was if we ever located anyone else after a certain time in the basin, and then

(Deposition of John I. Wells.)

I made answer about 5-3 and 6-3; we did locate four claims in the basin just before we located those claims in 6-3 and 5-3; the parties we located were Jesse B. Hawley and a fellow by the name of Clark, and John English, and his wife, and Miss Margaret Scully.

Q. She is the daughter of the old lady?

A. I think so; she works in the "Mode" that dry-goods store.

Q. When was it that you and Downs resumed your operations as locators?

A. After we got our money pretty much all run down we hadn't much money, and whenever we found a few claims we went and located. Downs was in the saloon business 8 or 9 months after he sold out his saloon we got to locating again together.

Q. In other words, after Downs had run a saloon for 8 months, you had to go to work again, is that it?

A. That is it.

Q. Were you in the saloon business?

A. No, sir.

Q. Did you work while Downs was running the saloon business?

A. I was not idle all the time.

Q. Now, had Downs been cruising up there in the 6-4 prior to the dissolution of your partnership?

A. I don't think so; no, sir. He had been through that country and I know we often talked about 6-4 going to open for entry sometime as it had been surveyed.

Q. Do you remember preparing for any entrymen any of the papers in 6-4?      A. No, sir; I do not.

(Deposition of John I. Wells.)

Q. I understood you to say that Sweet was not to receive any interest or money for the loan of this money that he had put out through you.

A. After he sold out he seemed to be satisfied with his deal, but he seemed to be a little bit anxious for me to make some money some way without him giving up any money.

Q. It was not incumbent upon you to pay him any interest upon that money and persons who borrowed it had no agreement to pay any interest on the money?      A. No, sir.

Q. You said that when you asked Sweet to loan you that money or advance it that he said that he had the money, but he would have to get some legal advice on the subject.

A. Yes, and think it over; he took a day or two anyway before he gave me an answer; he said he liked the scheme all right.

Q. What was the scheme, if he was not to get any interest on his money?

A. If he loaned the people this money he would have a lien on all the people that he had loaned money to, and they would be morally obligated to do business with him if he wanted to buy the land in the future, or do something with it in the future.

Q. Do you remember how much money you paid Dean West?      A. What for?

Q. The services that he did for you in handing this money out and getting people to locate?

A. I believe that West, in a few instances, charged the fellows something for giving them this money; I



(Deposition of John I. Wells.)

don't think I ever paid West anything for handing people their money.

Q. Are you sure of that?

A. I am sure of that.

Q. Did you hear Mr. West testify?

A. Yes.

Q. Did you hear him testify that you gave him money to take to four people, gave him \$25.00 apiece?

A. No, sir, I never heard him testify to that; if he testified to any such thing as that it was false.

Q. You said that Messrs. Paris & Manning came out here with Downs and Snow?

A. I don't know that they came with them, but they came at the instigation of Manning, and I heard afterwards that they paid Manning something for bringing them out there and locating them.

Q. And you said that Snow was going to pitch Manning out of a window at one of the hotels at Boise, because Manning did not do what he agreed to do.

A. I understood by Snow that he was going to run a lot of applicants out there and give him a job for locating them, and the consequence was that he brought two or three loads out and they put up at the Capital Hotel and he was spending money right and left and the money that he collected, the boys didn't get anything out of it, and they had all loaned him money, and he had had them up there in camp and they were about starved to death and instead of sending them up grub he had not sent them anything

(Deposition of John I. Wells.)

and they had had to run their faces in Centerville for grub to live on.

Q. When did you meet Mr. L. M. Pritchard?

A. The first time I met Mr. Pritchard I think was in the winter of 1902, after January. I don't recall just when or how. I know that I finally got him to file on a timber claim, I got \$25 out of him, too.

Q. The expressions that you have used in your examination about claims you located, you had reference to the claims that you and Downs had located?

A. In most instances. The first five fellows that come down to the Basin Downs had nothing to do with whatever; they were friends of mine and I assisted them in getting their exact minutes and they came down and filed and come back and paid me for it. I was not in Boise at the time they filed; I was at Centerville.

Q. How did Sweet give you this money, by cash or check?

A. Well, he generally brought it to me in a roll of bills.

Q. For one or two claims at a time, or did he give it to you so that you would have it on hand?

A. I never had it on hand there long. I remember of him giving me as high as \$2000 at one time. Sweet and I used to sit on the porch at Centerville at the saloon, and he had made a raise at this time; he made a raise promoting and selling mines.

Q. Did he lose all his money the same way?

A. I believe he lost all his money in Wall Street,

(Deposition of John I. Wells.)

or in a sugar plantation in Cuba; he was interested in both.

Q. You spoke something of having heard of a general order of suspension issued by the Commissioner of the General Land Office; do you know when that was?

A. It was sometime in the winter of 1902.

Q. In the winter of 1902? A. Yes, sir.

Q. How long did that last? I mean between January and the spring of 1902?

A. It lasted until along in June, I believe.

Q. I understood you to say that about a year ago you went down and located about 27 claims in 5-3, and 6-3.

A. I think I testified that about three years ago—I did that between three years ago and up until a year ago.

Q. How far is what you call Boise Basin, from the Crooked River?

A. Those creeks divide between the basin and Crooked River.

Q. Air line, how far is it?

A. From the summit of Moores Creek over to the other side of Crooked River side, it can't be only a few miles.

Q. Three or four miles?

A. I think there is one township in between the Crooked River country and the basin proper, 6-7 laps on to Crooked River pretty well.

Q. How wide is a township?

A. Six miles. I think the last claims that Downs

(Deposition of John I. Wells.)

and me located was a year ago last fall, in 5-3.

Q. With reference to the Keene deed, who drew that first deed to you?      A. Mr. Pritchard.

Q. How did you happen to go to Mr. Pritchard's office?

A. Mr. Pritchard was doing a good deal of work for me at that time. I have at my home a due bill of Arthur Anderson's for \$137.50 signed by Nugent, and on which Anderson made his mark, and that \$137.50 was paid Anderson in Kinkaid's office by Kinkaid; and it was my money.

Q. And is that the same deed that he made his final proof?

A. I think it was after he made his final proof, shortly afterwards.

Adjourned to Monday morning April 5th, at 10 A. M.

April 5th, 1909.

At 10 o'clock A. M., met pursuant to adjournment. Counsel for parties being present, whereupon Mr. John I. Wells proceeded to testify as follows:

(By Mr. BUNDY.)

Q. Have you refreshed your recollection as to whether you got \$1600 from Mr. Stunenberg in 1903?      A. No, sir, I have not.

Q. Mr. Wells, I show you check dated, Caldwell, Idaho, April 28th, 1903, drawn on the Commercial Bank, payable to the order of John I. Wells, for \$1600 and signed "Frank Stunenberg, Agent," stamped on it marked "Paid" by the Caldwell Bank, April 30th, 1903, and I ask you whether or not you

(Deposition of John I. Wells.)

received that check; is that your endorsement on the back of it, and did you get the money for it?

A. That is my endorsement, and I might have received that check at that time, but not in 1904.

Q. I said 1903.

A. You said 1904 the other day.

Q. There isn't a question but you received the check? A. No.

Q. But you have no recollection what it was for?

A. No, sir, I have not.

Mr. GORDON.—That is all.

Redirect Examination.

(By Mr. BUNDY.)

Q. Mr. Wells, the stub-book of Mr. Stunenberg which has been introduced in evidence shows the check of April 28th, for \$1600, and a notation on it, "John I. Wells, for two titles on Crooked River," apparently being the check just shown you; I will ask you as to whether or not you ever bought any titles on Crooked River?

A. No, sir, I never did.

Q. Did you ever buy for yourself individually, or for Mr. Stunenberg, any claims on Crooked River?

A. I never purchased any claims whatever on the Crooked River.

Q. Did you ever buy any claims on Crooked River for Mr. Kinkaid?

A. No, sir, I never did.

Q. Have you any recollection at all with reference to this check? A. None whatever.

Q. Mr. Wells, you stated in answer to a question

(Deposition of John I. Wells.)

by Mr. Gordon as to what if any interest you had in attending the taking the evidence at Boise for the witnesses in this case who testified at that place. I wish you would state a little more fully the arrangement you made with me and when it was made, etc., with reference to attending this testimony.

A. All I knew about it, why I met you when you arrived there, and you said you would like to have me present there during the examination of those witnesses, and that you would pay me for it, so I told you I would.

Q. You have assisted me all the way through in this case.      A. Yes, I have.

Q. And I have paid you, or agreed to pay you for your time?      A. Yes, sir.

Q. You remember my saying to you that my clients, the Barber Lumber Company, had no knowledge of these transactions and didn't know the persons, and that I would like to have you present and advise me as to who the parties were, etc.?

A. Yes, sir.

Q. You said that Mr. Kinkaid at the time you first consulted him with reference to the Anderson and Nugent loans advised you not to loan them money; and I ask you as to whether or not he advised you that loaning the money would be illegal, or for some other reason?

A. He said I had a perfect right to loan them money, but he advised me not to do so for the reason that they would all be running after me to borrow money, if I loaned to anybody, which proved



(Deposition of John I. Wells.)

true, but I went ahead and loaned the money any way.

Q. You testified at the time you began your testimony as to the value of these lands, that they were worth 50 cents per thousand based on what the State had sold? A. Yes, sir.

Q. The sales made by the State were to local dealers and in comparative small amounts, were they not?

A. They went to the highest bidder.

Q. But the sales were in comparatively small amounts? A. Yes, sir.

Q. Now, when it came time for these entrymen to sell their claims, I ask you as to whether or not, the price of what scrip could be procured fixed the price of these claims? A. Yes, sir.

Q. And scrip could be procured at \$5.00 per acre?

A. At \$3.50 in 1901.

Q. And from that up to about \$5.00?

A. Yes, sir; the wood in the basin country had been cut by local people and that was the rate they settled with the Government, always 50 cents per thousand; they had 300 cords that the Government had put a notice on for them to come and settle without moving the wood; I don't just know what they settled for, but it was not over 50 cents.

Q. During 1901 and 1902, did you have any business relations with Mr. Kinkaid other than timber transactions were you interested with him in any mining ventures?

A. No, sir, I think not.

(Deposition of John I. Wells.)

Q. Here is a check, I will call your attention to, of June 14th, 1904, it seems to have been drawn to John Kinkaid for part payment of John I. Wells' title; that seems to be a personal check of his. Did that have anything to do with your title that you entered?

A. I don't think so; I know that I never got a dollar for my title until I sold to the Barber Lumber Company.

Q. In 1906? A. Yes, sir.

Q. That check seems to have been made to Mr. Kinkaid and not to you; do you know anything about it?

A. I don't recall anything about it.

Q. Under date of June 25th, there is a check to L. M. Pritchard for balance of John I. Wells' title, which also seems to be a personal check of Mr. Stunenberg; do you know anything about that?

A. I don't remember now, but I judge it was for the collection of the Sweet moneys.

Q. Have you any distinct recollection on the subject? A. No, sir.

Q. Under date of July 31st, 1904, there is a check to John I. Wells, for commission account Kinkaid, Crooked River, and a similar check under date of August 31st, which reads the same "to John I. Wells for commission account of Kinkaid, Crooked River." Each of these checks are for \$150.00, apparently checks made payable to you; have you any recollection of those checks?

A. I have a recollection of a check for something

(Deposition of John I. Wells.)

over \$100 to reimburse me for expenses on a trip into the Deadwood basin about that time, and that was a check from Frank Stunenberg; he was interested in a mining deal with me.

Q. Did that have anything to do with this timber in question? A. No, sir.

Q. Did you have anything to do, with any commission growing out of the purchase or sale of Crooked River lands? A. No, sir.

Q. Did you have any interest in Mr. Kinkaid's commission? A. No, sir, I did not.

Q. Do you know anything about Mr. Kinkaid's commission in the Crooked River? A. No, sir.

Q. You were asked some questions as to what you had been doing since 1903; I will ask you if you have been doing much in the real estate business since that time?

A. I was pretty lively until I was indicted in this timber business, and since then I haven't been so lively, because it hurt my credit and I could not do so much.

Q. I will ask you that during the time this evidence in this case was taken in Boise, if that indictment was still pending against you, or was it not?

A. Yes, sir.

Q. And has been settled since then?

A. Yes, sir.

Q. You have done business enough since 1903, to make your living? A. Yes, sir.

Mr. BUNDY.—That is all.

(Deposition of John I. Wells.)

Recross-examination.

(By Mr. GORDON.)

Q. There is still an indictment standing against you in this timber transaction?

A. I understand there was one that was not dismissed, but I believe the bonds were dismissed.

Q. The bonds were dismissed because as you had given bond in one case growing out of the same transaction, they didn't require a bond in the other case.

A. They never did require a bond in that one indictment.

Q. Do you remember how many persons you located in the basin, in the Crooked River country, who made their final proof on those claims conveyed to the Barber Lumber Company, or conveyed to persons, and the title eventually got into the Barber Lumber Company?

A. I don't know just how many of them sold to people that turned it over to the Barber Lumber Company, but I understand that the Barber Lumber Company has bought practically all of the land that was located in that country.

Q. Can you recall any claim that you located in the Crooked River or the basin, that did not eventually get into the Barber Lumber Company's hands?

A. I do not.

Mr. GORDON.—That is all.

Redirect Examination.

(By Mr. BUNDY.)

Q. Is there any other company in that vicinity

(Deposition of John I. Wells.)

who has operated mills, or would buy claims?

A. None except local mill people there; there was a small mill there in Boise for several years.

Q. A small concern?

A. Yes, they bought land nearer to Boise.

Q. The timber in the Boise Basin that you located was remote from Boise? A. Yes, it was.

Q. Was it advisable for any person to buy that except on a large scale and go to the expense of bringing it to Boise?

A. I always figured that they would have to fix some way of getting it out of there, besides driving it.

Q. You have no means of knowing what lands the Barber Lumber Company owned except what you have heard in this case?

A. Yes, and from newspaper reports.

Q. And you know that the Barber Lumber Company own a good many thousand acres of land in this locality that you didn't locate?

A. I have heard it.

Recross-examination.

(By Mr. GORDON.)

Q. Did you know of any other persons that were trying to buy up those claims other than the Barber Lumber Company?

A. Yes, sir, I knew of fellows trying to buy them.

Q. Representing big companies?

A. Well, I heard that the Fayette Lumber Company was trying to buy in there,

Q. At the same time that the persons named in

(Deposition of John I. Wells.)

this bill were acquiring?

A. It was along about that time they were acquiring timber in the Fayette Company, with head offices at Boise, and I understood they bought most of that country.

Q. I am speaking of this timber in the Crooked River Country?

A. There is only a divide between the two; a water shed.

Q. Did you know a man by the name of DeArce?

A. Yes, sir.

Q. Was he trying to buy for some company?

A. I have heard since this case began that he was.

Q. I am asking what you knew at that time?

A. I didn't know at that time.

Mr. GORDON.—That is all.

**[Deposition of Louis M. Pritchard, on Behalf of the Defendants.]**

LOUIS M. PRITCHARD, a witness called on behalf of the defendants, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. BUNDY.)

Q. Mr. Pritchard where do you live?

A. Los Angeles.

Q. How long have you lived here?

A. About two years, a little over.

Q. You are one of the defendants in this action, are you not?



(Deposition of Louis M. Pritchard.)

A. I believe I am named as one of the defendants; I haven't had an opportunity to read the complaint.

Q. Where did you reside before living in Los Angeles? A. In Boise, Idaho.

Q. How long did you live there?

A. I lived there four or five years.

Q. And what was your business or profession while in Boise? A. Practicing law.

Q. And where were your offices?

A. Located in different places; most of the time I was in Peter Sonna's building.

Q. Did you live in Boise in 1901, 1902, and 1903?

A. I think I must have come there in 1900 or 1901; I am not sure about that.

Q. And lived there until about two years ago?

A. Yes, sir.

Q. Do you know the defendants James T. Barber, or Sumner G. Moore, or either of them?

A. No, sir.

Q. Did you ever talk with them or ever have any business transactions with them? A. No, sir.

Q. Did you ever have any correspondence with them?

A. I never did.

Q. Do you know L. G. Chapman?

A. Yes, slightly.

Q. Did you ever have any business relations with him?

A. No business relations that I recall now, except in connection with one claim, the Swan claim.

(Deposition of Louis M. Pritchard.)

Q. That was later?

A. Yes, that was later.

Q. Can you tell about what year that was?

A. I am very poor on dates, but it only a short time before Governor Stunenberg was killed.

Q. Sometime in the year 1905?

A. Yes, sometime before that.

Q. Do you know John I. Wells and John Kin-  
kaid? A. Yes, sir.

Q. Did you know Governor Stunenberg in his  
life? A. Yes, sir.

Q. Did you know A. E. Palmer?

A. No, not personally.

Q. Did you ever have any business relations with  
him?

A. Not that I know of, except that I made some  
deeds, I believe, in which he was grantee.

Q. Did you make those at his personal solici-  
tation? A. I did not.

Q. Did you ever have any conversation or cor-  
respondence with Mr. Palmer relative to timber  
lands in the State of Idaho?

A. I never had any correspondence with him of  
any kind.

Q. Or did you have any conversations with him  
relative to timber lands?

A. No, I never met him.

Q. Did you ever have any correspondence or con-  
versation with either John L. Long, or Horace S.  
Rand, with reference to timber lands in Idaho?

A. No.

(Deposition of Louis M. Pritchard.)

Q. Do you know either of these gentlemen?

A. I saw Mr. Long at Boise in the trial of Mr. Borah's case.

Q. That was in the fall of 1907?

A. Yes, sir; that is the only time I saw him.

Q. Did you know William Sweet?

A. Why, I had an introduction to him, I guess probably in 1902, that is all, and then I met him up at Boise after these indictments were returned, and got well acquainted with him at that time.

Q. Did you ever have any correspondence or conversation with Mr. Sweet during the years 1901-02, 03 or 04, relative to acquiring timber lands in the State of Idaho?

A. No, I believe not.

Q. Do you know Mr. Wells and Mr. Kinkaid?

A. I do.

Q. Were you employed by any persons during the years 1901, 03, 03 or 04, as attorney, or otherwise, in the matter of buying timber lands in the State of Idaho?

A. I was employed by Mr. Kinkaid; I acted as notary public and in the matter of purchasing claims.

Q. During that time or any time, were you employed by Governor Stunenberg for the purchase of claims?

A. I was not.

Q. Or John I. Wells? A. I was not.

Q. Or Patrick Downs? A. No.

Q. William Sweet? A. No.

Q. Mr. Barber or Mr. Moon?

A. No, sir.

(Deposition of Louis M. Pritchard.)

Q. Or Mr. Palmer, Mr. Rand or Mr. Long?

A. No.

Q. Were you at any time employed by any persons in the matter of purchasing timber lands in the State of Idaho other than Mr. John Kinkaid, the defendant?

A. I believe no one, except in one entry in 1904 or 1905, that I bought at the suggestion of Governor Stunenberg and sold to the Barber Lumber Company.

Q. What entry was that?

A. That was the Swan claim.

Q. Did you buy that for yourself or Governor Stunenberg?

A. I bought it for the Barber Lumber Company; there was a mortgage on the property and that was the occasion as I understood it, of the governor wanting to purchase the title for the Barber Lumber Company, purchase the title and thereby straighten out the mortgage and interest.

Q. And were you paid for your services in that connection by the Barber Lumber Company?

A. No; I made a little commission off the transaction for the reason that I bought the claim a few dollars cheaper than the amount that the Barber Lumber Company agreed to pay me.

Q. That is, they offered a certain price for the claim and you bought it at a less price?

A. Yes. I first went to Mr. Chapman, I believe, and got an estimate of what he would pay for those two claims, and then I went and entered into negotia-

(Deposition of Louis M. Pritchard.)

tions with Mr. Swan and closed the transaction.

Q. When were you first employed, if you can remember, by Mr. Kinkaid in this timber business?

A. I am not sure about the date, but I am inclined to think it was in 1902.

Q. On or about June, 1902?

A. I think so.

Q. Was it then or about the time you began making deeds?

A. I believe it was about the time they commenced taking deeds, but it was long after they commenced making locations.

Q. Well, now, what was your employment with Mr. Kinkaid as to what you were employed by him to do?

A. Simply to buy and obtain the titles, and deeds to timber claims up there in the basin, and do such notary work as he had. Mr. Kinkaid was very good to me and brought me all the jobs he could, such as making deeds and papers and other little transactions, and furnished me some money to buy those claims with.

Q. Now, who paid you for your services for doing that?

A. Mr. Kinkaid, except in a few instances entry-men paid for the making of their own deeds.

Q. And of what did your services consist in making out the deeds and acting as notary?

A. Simply of purchasing timber claims.

Q. And who furnished you the money with which to purchase those claims?

(Deposition of Louis M. Pritchard.)

A. Mr. Kinkaid.

Q. And who told you to whom to make the deeds?

A. Mr. Kinkaid.

Q. And what did you do with these deeds when you had acquired them?

A. Turned them over to Mr. Kinkaid.

Q. State as to whether or not in purchasing some of these timber claims in the State of Idaho, you paid a portion of the purchase money out to the entrymen or entrywomen, and to John I. Wells, and other people?

A. Generally I paid the entrymen, but it was quite common for Mr. Wells and other people to make settlements with the entrymen at the time, and I would split the money and pay it over, according to their agreement in reference to the matter.

Q. State as to whether or not, Mr. Wells, in some instances, made you a statement of amounts due to him which he desired to collect?

A. I don't remember of his making statements, but I know that there were occasionally amounts that I kept out for Mr. Wells.

Q. State as to whether or not there were occasionally amounts kept out for other people?

A. Yes, there were, but I have no distinct recollection of any of the transactions for I was not interested. There was a great many of them, and it was calculated to impress itself upon my mind.

Q. Did you attempt, or were you employed at any time by Mr. Wells to assist in making collections of money due to him, for instance, from Mrs.



(Deposition of Louis M. Pritchard.)

Burns? A. Yes, I believe I was.

Q. Did you make a demand upon Mrs. Burns for money due at Mr. Wells' request?

A. I think I did call on Mrs. Burns at one time, but the only distinct recollection I now have was in reference to a \$50 due bill that he had. There might have been other amounts, but I remember that one distinctly.

Q. In your capacity as attorney, and in attempting to collect this from Mrs. Burns, were you acting for any person other than Mr. Wells, himself?

A. No persons but Mr. Wells.

Q. Did you have any interest in the location fees of Wells and Downs, or either of them?

A. No.

Q. Did you have any interest whatever in the purchase of these claims other than you were paid by Mr. Kinkaid for your services?

A. Not a dollar.

Q. Did you know when these lands were located, or what lands were located?

A. I didn't know when they were located nor what lands were located, nor who located them, except as the facts came to my attention in making out conveyances after final proof had been made.

Q. Did you in any instance, Mr. Pritchard, buy or take a deed from any entryman or entrywomen before the final receipt and final certificate of the Boise land office had been issued?

A. Not to my knowledge.

Q. State as to what instructions you had in that

(Deposition of Louis M. Pritchard.)

regard from Mr. Kinkaid?

A. My instructions were only to buy after final receipt was issued.

Q. And did you attempt to comply with those instructions?

A. I endeavored to comply with those instructions, and believe I did so.

Q. Final receipts were issued in these claims in dispute along in June and July, and later in 1902, and from that date can you tell when you were first employed in the purchase of those timber claims?

A. It must have been along in June or July, but I am not sure about that date, or even the year.

Q. Were you a party to any agreement or understanding between Frank Steunenberg, John Kinkaid, John I. Wells, William Sweet, Sumner G. Moon, James F. Barber, Patrick Downs, Horace S. Rand, George S. Long, or any of them, or between those gentlemen and either of them, or any of them, and any entryman or entrywoman whereby such lands were to be entered by the entrymen and entrywomen for the benefit of the defendants in this action?

A. I was not.

Q. Did you ever hear or know of any such agreement?

A. I have no knowledge of any such agreement by any person or persons.

Q. I ask you if you ever heard of any such agreement prior to the time you were served with an indictment of the District Court of Boise County, State of Idaho?

A. I did not.

(Deposition of Louis M. Pritchard.)

Q. As far as you know was there any such agreement in existence between any of the other parties other than yourself?

A. No, sir, nothing came to my knowledge that led me to believe there was any such agreement; in fact, from things that came to my knowledge I was thoroughly convinced otherwise.

Q. Did you have any connection in the location, proving up or subsequent sale of timber and stone claims in the State of Idaho other than as you were employed by Mr. Kinkaid as an attorney and notary public, as you have stated, and the Swan claim that you have mentioned.

A. I don't believe so except perhaps in one or two instances, and I only recall one now,—the entry made by Mrs. Elma Gordon about which I had some conversation with her, and advised her that I thought it would be a good thing for her to take up a timber claim, and I went with her to see the land in company with Mr. and Mrs. Blanford, who was the weather bureau man in Boise.

Q. An employee of the United States?

A. Yes, an employee of the United States.

Q. Were you on friendly terms at the time with Mrs. Gordon?

A. Yes, sir, I was.

Q. Were you also an intimate friend of the Blandfords?

A. Yes, sir, I was.

Q. Now, in suggesting to Mrs. Gordon the advisability of taking up a claim, were you acting for Mr. Kinkaid, or for any person other than as a friendly adviser of Mrs. Gordon?

A. I was not.

(Deposition of Louis M. Pritchard.)

Q. Did you have any discussion with her, and know what she was going to do with it when she got it?

A. I don't recall any discussion.

Q. Did you make a similar claim yourself?

A. Yes, in company with the parties I named, Patrick Downs, however, was the cruiser, and took us out and showed us the land.

Q. I will ask you as to whether or not you paid Mr. Downs the usual locating fee for his services?

A. I don't recall that, but I am satisfied that it was paid, perhaps I settled the business for Mrs. Gordon as well. I remember distinctly about the team that we employed; Mr. Blandford and I settled that up and I afterwards had a settlement with Mrs. Gordon.

Q. Now, with reference to location fee for your own claim, do you remember about that?

A. I remember that I was charged a location fee, but I don't remember who I paid it to.

Q. You made your filing March 21st, 1902, and I ask you as to whether or not it was after that that you were employed by Mr. Kinkaid?

A. It was after that.

Q. At the time you made your location and Mrs. Gordon made hers, had you been employed in any capacity by any of the persons named, as attorney, or otherwise, for the purchase of timber lands in the State of Idaho?

A. At the time I made my location,—if I made my location in March, 1902, I was not then employed in any capacity by any person. At the time Mrs.

(Deposition of Louis M. Pritchard.)

Gordon made her entry, which was later, to my recollection, I was then employed as I have stated.

Q. Except as you have stated, Mr. Pritchard, did you have any connection whatever with the purchase of timber lands in the State of Idaho, by Frank Steunenberg, or the Barber Lumber Company, John Kinkaid, or any of the other defendants named?

A. I have no recollection of anyone, except, occasionally by entrymen making out their entry papers.

Q. Your office was right near, and in the same building as the United States Land Office, at that time, was it not? A. Yes, sir.

Q. Were you paid by Mr. Kinkaid by the month or by the jobs done, or work done?

A. Ordinarily by the piece, for making deeds, and things of that kind, and about— Oh, every few days, we would have a settlement for work that I had done, papers that I had drawn, and that would be the end of it.

Q. Do you recall at about what time your service in that manner terminated?

A. No, I can't tell; it was sometime in 1903, I believe; I think I had very little to do with the last entries that were made. There was no specific arrangement terminating my employment, for the employment was such that it needed no termination.

Q. Did you have any interest, financially or otherwise in inducing people to enter upon timber and stone lands? A. None whatever.

Q. Or did you have any such interest in inducing

(Deposition of Louis M. Pritchard.)

them to sell to the Barber Lumber Company?

A. None whatever, except that I desired to purchase a title whenever I could do so.

Q. Who arranged with the various entrymen as to the price you should pay them?

A. I think in most cases I arranged myself, and agreed with the entrymen upon the price of their land. If there were any amounts to be deducted out, or divided up with any other person, that was a matter that they and those persons interested, figured up and I settled according to their arrangement, otherwise I paid the entrymen the full price of their land.

Q. Were you in each instance, furnished sufficient funds by Mr. Kinkaid to pay the total purchase price agreed upon with the entrymen?

A. I think so. I often had money enough to buy two or three entries, in advance.

Q. Mr. Pritchard, were you requested at any time by any entrymen to procure funds for them by way of advancement on their claims, and if so, by whom?

A. The only instance that I recall now was the entry of Mr. and Mrs. Blandford, and at the time their proof came to be made; they didn't have funds sufficient to make their proof and he asked me if I could raise it for him, and I told him I didn't know whether I could or not, but I doubted it. I went to see Mr. Kinkaid, who was a very intimate friend of mine and tried to borrow the money from him; he told me that he would like to accommodate me, but he could not do so. I informed Mr. Blandford, and he obtained the money from Peter Sonna, the owner



(Deposition of Louis M. Pritchard.)

of the building in which the Weather Bureau was located, and in which both of us were located.

Q. Mr. Pritchard, a number of deeds that have been introduced in evidence were acknowledged before you, in some of which the date seems to be in different writing in the body of the deed, and in some instances the date seems to have been erased and another date put in; can you explain that?

A. I cannot; unless it would be possible to do when I was shown a particular deed.

Q. You don't recall any at this time?

A. I don't recall anything from the regular routine of making those deeds.

Q. I will ask you this question: Did you at this time take deeds and did they or did the acknowledgment of any deed bear other than the exact date at which you took the deed, or took the acknowledgment?

A. I don't think so; there was a few instances that I recall in which I would purchase a claim of an entryman and his or her wife or husband would not be present at the time and I would afterwards get the acknowledgment of the other party and date the acknowledgment of both of them at the date of the latter, for I usually re-acknowledged it by both parties on that date.

Q. Do you recall if the purpose of that was to save work, a separate acknowledgment?

A. Yes, sir, a separate certificate.

Q. Do you recall any instance where deeds were made out and left with you for the purchase of

(Deposition of Louis M. Pritchard.)

claims, and the dates left blank.

A. I don't recall any such, but there might have been.

Q. Do you recall any instance in the latter part of your employment Mr. Kinkaid would prepare the deeds and in leaving town would leave them with you for any purpose?

A. I remember the later deeds were mostly prepared by Mr. Kinkaid, but as to the blank dates, etc., my memory is very deficient.

Mr. Pritchard, the bill of complaint in this action charges that you and the other defendants named, entered into an agreement and conspiracy, having for its object the inducing and persuading of entrymen and entrywomen therein named to make filings upon timber and stone claims at the request of and for the benefit of the defendants; were you ever a party to any such agreement or similar agreement?

A. I never was.

Q. And it is further alleged that pursuant to that agreement you and the other defendants did induce the entrymen and entrywomen named herein to make their filings and afterwards induced them to make final proof, all for the purpose of ultimately turning the land over to the defendants, or to such person, firm or corporation, as the defendants should direct; is that allegation true or false so far as you are concerned?

A. It is, so far as I am concerned.

Q. And it is further alleged in this complaint that for the purpose of consummating that agreement,

(Deposition of Louis M. Pritchard.)

you and the other defendants induced and persuaded the entrymen and entrywomen named to go before the land office, and testify falsely both at the time of making their original filing, and at the time of making final proof; is that true or false, so far as you are concerned?           A. False.

Q. Did you at any time, directly or indirectly, suggest to any entryman or entrywoman what they should testify to at the land office?

A. No, sir.

Q. Did you ever at any time directly, or indirectly, request or suggest any such entrymen to file upon any lands, except Mrs. Gordon, as you have testified?

A. I have no recollection of doing so.

Q. Did you have any connection whatever with the filing, proving up, or subsequent sale of the timber and stone entries made in the State of Idaho, mentioned in this complaint, other than as you were employed by Mr. Kinkaid, as you have testified?

A. I have no recollection of anything of the kind.

Q. Do you know Mr. W. C. Lane?

A. The liveryman?

Q. Yes.           A. Yes.

Q. I will ask you as to whether or not you ever paid Mr. Lane for team hire, or livery bill, which was due to Mr. Lane for John I. Wells?

A. I have no recollection of such a thing.

Q. Where did you and Mr. Blandford get your team when you went up into that country?

A. I am not sure but we may have gotten the

(Deposition of Louis M. Pritchard.)

team from Mr. Lane, and I believe we did.

Q. Have you any recollection of ever paying Mr. Lane any money on account of a livery bill for Mr. Wells?

A. No, sir, I have no such recollection.

Q. Do you remember where you got the team when you went up to make your own filing?

A. Yes; at that time I was going up on the stage, and while I went to get something to eat, the stage went off and left me and I had a fight with the stage boss and went and hired a rig, and went to Mr. Lane's.

Q. And afterwards paid him that bill?

A. Yes.

Q. Do you know Frank R. McDonald?

A. I may have seen him, but I don't remember him now.

Q. Mr. McDonald testified that he borrowed about \$250 or \$300 for the purpose of proving up, from you; is that statement true or not?

A. It is not true so far as borrowing any money from me is concerned. I have no recollection of anything of the kind, and if he got the money from me, it was left there by some person, that I have no recollection of, for him.

Q. You personally gave him no money?

A. No, sir, and was not authorized to do so with any money of Mr. Kinkaid's, and I had no money of my own to loan, and I don't know Mr. McDonald.

Q. He further testified that he gave you a note for the amount; did you ever take a note from him

(Deposition of Louis M. Pritchard.)

for that amount?

A. I have no recollection.

Q. Do you recall buying his claim afterwards?

A. No, but I might have done so.

Q. Do you recall buying a claim from a man by the name of Allen, in which Mr. Humphreys was interested?

A. No, I have no recollection of such a transaction.

Q. Do you recall any case where Mr. Humphreys told you to collect certain moneys due him from any entrymen or entrywomen?

A. I remember of having some conversation, and a slight acquaintance with Mr. Humphreys, but as to any of the facts in relation to that matter, I don't remember; it was quite common for entrymen and their friends to come in and talk their business affairs over to me, but it took up so much of my time that I almost always tried to make them as short as possible.

Q. I want to ask you about the evidence of one Mr. Stevenson and the fact that he sold his claim to you, and at the time he signed the deed he testified it was folded over so he could not see what was in the deed; I ask you as to whether or not in his case, or in any other case, was there any reason why, or any attempt ever made to prevent entrymen or entrywomen seeing the deed they were signing?

A. No, sir, there was no reason for it; it was never done intentionally, and every person of whom I purchased felt they were given a good and sufficient deed; there was nothing to conceal.

(Deposition of Louis M. Pritchard.)

Q. They all knew they were giving warranty deeds, didn't they?      A. Yes, sir.

Mr. BUNDY.—That is all.

Cross-examination.

(By Mr. GORDON.)

Q. Did you explain to each person you purchased a title from that they were making warranty deeds?

A. I have no recollection of explaining to each person that they were making a warranty deed; but I am satisfied that every one knew that they were warranty deeds and they had plenty of opportunities to read them and see different things. There was absolutely no deception in any matter of that kind.

Q. I mean you didn't feel called upon to explain to these people that they were giving a warranty deed as distinguished from a deed without a warranty?

A. If I had had dealings with any person who didn't know I am quite sure that I would have told them, but it was understood and I always supposed they all understood that it was a warranty deed, and in most instances the deed was either read over by themselves, or by me to them.

Q. How many of the persons from whom you purchased titles, mentioned in this complaint, do you think could distinguish between a warranty and a deed that was not a warranty deed, or knew a deed when they saw it if it was not printed on it that it was not a deed?

A. I can call to mind no person who didn't know the difference between a warranty deed, and a quit-



(Deposition of Louis M. Pritchard.)

claim deed, or there may have been some who didn't understand the technical legal difference between quitclaims and warranty deeds.

Q. (By Mr. BUNDY.) Mr. Pritchard, there has been some evidence here of entrymen who sold their claims to you, to the effect that the deed was all prepared when they first went to you to sell, and I ask you as to whether or not that is true, in any instance?

A. It is not true in any instance that I have any knowledge of.

Q. (By Mr. GORDON.—Continuing Cross-examination.) I show you a deed dated March 14th, 1903, made by Frank Lane to A. E. Palmer, and marked "Complainant's Exhibit Frank Lane No. 1," and ask you whether or not that deed is in your handwriting?

A. The body of the deed is not in my handwriting.

Q. In whose handwriting is the body of the deed?

A. I judge that it is in the handwriting of Mr. Kinkaid.

Q. Mr. John Kinkaid? A. Yes, sir.

Q. There isn't any question in your mind about that being Mr. Kinkaid's writing?

A. No, there is no question.

Mr. BUNDY.—It is stipulated that Mr. Kinkaid recognizes his own handwriting.

Q. (By Mr. GORDON.) Mr. Pritchard, can you by looking over this bill of complaint, or the bill of complaint in this action, recall the name of the persons from whom you bought the claims?

(Deposition of Louis M. Pritchard.)

A. I cannot; many of them were strangers to me, and I could not name them; there might be some that when my attention was called to them, I could mention as having sold to me.

Q. Would you mind looking over this list of names and see if they refresh your memory as to those you did purchase the claims from?

A. I will look at it; my recollection is very poor as to persons I bought titles of (examining bill); I am quite sure I bought Lelia Stevenson's; I believe I bought Gustave A. Link's and Mary Link's; Louis K. Burns, I am quite sure I bought his. Louis L. Paulsen, and Joseph M. Hollister; I believe I bought Albert B. Ewing's and Cora B. Ewing's, John E. Hobbs, Elmer E. Gardner, Samuel M. Blandford, Emma Lou Blandford. I know there are many more whose titles I purchased, but I cannot positively recall the transactions at this time; something may recall them to my mind in the course of the testimony. It has been a good many years and most of the entrymen were strangers to me.

Q. How old are you, Mr. Pritchard?

A. Past 52.

Mr. GORDON.—I will ask the stenographer to read to you the names that you have mentioned, and ask if they are all the persons that you can remember of having purchased claims from involved in this bill, as qualified by your answer on that subject. (List of names read by stenographer.)

A. Those are all in the list of whom I am quite positive I bought claims; I know, however, that there

(Deposition of Louis M. Pritchard.)

are many more entrymen whose land I purchased.

Q. Do you mean you know that there are more persons from whom you have purchased titles of property involved in this suit, but you can't remember their names, is that correct?

A. I don't remember the names, and the distinct circumstances of the transaction, but I know there was a large number of persons of whom I purchased titles.

Q. In other words, you have only named 11 persons, I think, and you know that you bought more than 11 titles? A. Yes, sir, many more.

Q. And reading the names and description from the bill does not refresh your memory as to other persons from whom you bought titles, does it?

A. Many of the persons whose names are called to my attention in the bill are persons whom I know, and am inclined to believe I purchased their titles, but I have no distinct recollection of the transactions at this time.

Q. Are the persons you have named, the only persons you can remember with whom you had any transactions, or negotiations concerning the title to the property of the respective persons named in the bill?

A. The parties I named are those, and only those which I am quite positive of having bought their titles. I know, however, that I have met a large number of the parties named in the complaint, and as I have had very little business with them unless it was in connection with the purchase of their claims, I am quite sure that I purchased the claims

(Deposition of Louis M. Pritchard.)

of a large number of other persons mentioned in the complaint.

Q. Did you prepare the deeds conveying the property of these 11 persons?

A. Let me look over those again.

Q. I will read them to you. (Reads names to witness.)

A. Yes, I am quite sure that I made out the deeds for those conveyances.

Q. Do you remember whether you made out the deeds or entry papers for any of the other entrymen mentioned in the bill?

A. I know that I did, but I can't recall the particular transactions at this time.

Q. And reading the names of those persons in the bill, doesn't refresh your recollection to the extent that you can swear as to what you did with those other persons in connection with their acquiring title?

A. No, sir.

Q. You stated that the property that you bought and all the money that you used in the transactions, except as you have qualified in your testimony, was received from John Kinkaid, is that correct?

A. Yes, I believe so. There may have been individual transactions from other persons that I have no recollection of.

Q. I mean with reference to the property and the entrymen mentioned in the bill of complaint; did your last answer contemplate that?

A. Yes.

Q. And did Mr. Kinkaid give you the purchase price of this property, did he give it to you by cash or by check?

(Deposition of Louis M. Pritchard.)

A. Usually in cash, and it was seldom given me in exact amounts for a purchase, but in such a way that I would have a surplus.

Q. In other words, he would give you a lump sum, is that it? A. Yes, sir.

Q. Would Mr. Kinkaid tell you the name of the entryman and give you a description of the property he desired you to purchase?

A. Not as a general rule.

Q. What were his instructions to you as to what property you should purchase?

A. My instructions were to purchase any of these timber claims up in that locality that I could buy.

Q. That was upon any timber claim that had been entered at that time?

A. Yes, there was nothing said about that as I remember of. It was of course, some of those who had procured their title, or right after procuring their title.

Q. Did you have any arrangement or arrangements with any bank in Boise, by which you could obtain money from said bank for the purchase of these timber claims by drawing your own check upon it? A. No, sir.

Q. Did you have any arrangements with any bank by which you could go to that bank and get money without drawing check?

A. No, sir, but there may have been one or two instances in which I had deposited some money in the bank and checked it out, but usually I got my money in currency, and deposited it in the vault of

(Deposition of Louis M. Pritchard.)

Peter Sonna, the owner of the building in which I was located.

Q. You do not understand my question. Did you have any arrangement with any bank at Boise, or any other place, by which you could go and get money without a check, for the purpose of buying these timber claims?

A. No, sir, and as a rule not with a check; that is my condition to-day.

Q. Did you have any arrangement by which you could enclose a deed drawn to Mr. Palmer, or anyone else, with a note to any bank in Boise, and that upon the presentation of that note, or letter, with the deed to that bank, the bearer of it would be paid a certain sum of money?

A. I had no such arrangement of any kind with any bank or person, other than Mr. Kinkaid.

Q. I understood you to say that you did not know A. E. Palmer? Is that correct?

A. That is correct.

Q. And who told you to put A. E. Palmer's name in the deeds that you drew as grantee?

A. I have no distinct recollection; I am quite sure, however, that it was done under the instruction of Mr. Kinkaid.

Q. Did Mr. Kinkaid pay you a salary for your services?

A. No; there was no arrangement of salary.

Q. Did he pay you so much for each title that you acquired? A. No.

Q. What were your arrangements with Mr. Kinkaid in that respect?



(Deposition of Louis M. Pritchard.)

A. By taking these titles I would get the conveyances acknowledged in a great many cases, and sometimes some other little job afterwards from the grantee, and those things were charged up to Mr. Kinkaid, I mean such conveyances and things as I did for him, were charged up to him at my regular office fees for such work.

Q. And what were your office fees for drawing a deed, \$2.00? A. \$2.00, I think.

Q. And for taking an acknowledgment 50 cents?

A. I believe so; and Mr. Kinkaid, when he would settle up every few days, if I had much outside work we would agree on an amount to be paid me and balance everything up for the outside trouble that I had been to.

Q. Can you tell how much that would amount to per claim?

A. No, sir, I cannot, because it was not contingent upon the claim, or the number of claims, but upon actual services rendered. In some instances I would be required to go from my office to other places round about town to attend to matters in connection with the deeds, and it would be greater in some instances than in others.

Adjourned to 1:30 P. M.

April 5th, 1909.

Pursuant to adjournment the taking of testimony was continued at 1:30 P. M.

Q. (By Mr. GORDON.) Mr. Pritchard, you took up a claim under the Timber and Stone Act in March, 1902?

A. I believe that is the year.

(Deposition of Louis M. Pritchard.)

Q. I will show you a timber and stone sworn statement of L. M. Pritchard, dated March 21st, 1902, and will ask if you filed and signed that paper in the land office on or about that date?

A. Yes, sir, that is my signature without a doubt.

Q. And that paper is in your handwriting, is it?

A. Yes, sir.

Q. I will show you the testimony given on final proof of Louis M. Pritchard, June 11th, 1902, and ask you if you signed that paper; is that your signature? A. Yes, that is my signature.

Q. I show you a non-mineral affidavit dated March 21st, 1902, signed Louis M. Pritchard, and also notice of publication of the same date, and ask you if you signed the non-mineral affidavit and filed it in the land office at Boise on or about the date it bears, and whether the two papers are in your own handwriting?

A. The non-mineral affidavit and notice of publication are both in my handwriting and my signature is attached to the non-mineral affidavit.

Q. I show you deed dated March 19th, 1903, made by Louis M. Pritchard to A. E. Palmer, consideration \$1000, acknowledged before Benj. H. McGrew, Notary Public, and I will ask you if you signed and acknowledged that paper, and is that your signature attached to it? A. Yes, sir.

Q. In whose handwriting is the deed?

A. Mr. Kinkaid's.

Q. Mr. John Kinkaid's? A. Yes, sir.

Q. How much did you get for your claim, Mr. Pritchard? A. I don't remember.

(Deposition of Louis M. Pritchard.)

Q. \$650?

A. I guess so, if that is what the deed recites, but I have no recollection.

Q. The deed recites \$1000.

A. I don't remember about that.

Q. And did you have any reason for not preparing that deed yourself?

A. No, I don't suppose so; I suppose there was some reason why I didn't do it, but I don't remember what it was.

Q. At that time were you buying land for Mr. Kinkaid, or were you not? A. Yes, I was.

Q. And was being paid by him for preparing deeds? A. Just what year is that?

Q. That is in 1903.

A. I don't know whether—I think that was after Mr. Kinkaid had commenced making most of the deeds himself.

Q. When you made your final proof, do you remember whether you paid the \$400 in to the land office by check or in cash?

A. I don't remember whether it was by cash or with a check; I presume it was cash, because the land office would not take a check.

Q. Did you borrow any of that money?

A. I don't know whether I did or not, I expect I did, whatever my proof says is the facts.

Q. On cross-examination you swore that you had saved it out of your business transactions at different times. In answer to the question as to whether you had a bank account in the previous six months,

(Deposition of Louis M. Pritchard.)

you said, "I had not until a few days ago; I gathered my money together and deposited it in Boise, Idaho."

A. That is the fact as near as I can remember.

Mr. GORDON.—We offer in evidence the timber and stone sworn statement of Louis M. Pritchard, dated March 21st, 1902, and non-mineral affidavit and notice of publication, testimony of Louis M. Pritchard of final proof, June 11th, 1902, all of which papers have been identified by the witness Louis M. Pritchard, as having been signed by himself and filed in the land office at Boise, Idaho, and the testimony of the other witnesses regarding final proof, Receiver's receipt and Register's certificate dated June 13th, 1902, the cross-examination of Louis M. Pritchard given at the time he made his final proof and attached to it, the deed dated March 19th, 1903, made by Louis M. Pritchard to A. E. Palmer, identified by Louis M. Pritchard, as having been signed and acknowledged by him, certified copy of patent dated January 28th, 1904, all to the Northwest quarter of Section Twenty, in Township Six North, of Range Six East, Boise Meridian, all of said papers marked "Complainant's Exhibit Louis M. Pritchard No. 1."

Redirect Examination.

(By Mr. BUNDY.)

Q. Mr. Pritchard, I neglected to ask you something in reference to some of the second deeds that were taken by certain of the entrymen, and I think it appears in the evidence that you took some of

(Deposition of Louis M. Pritchard.)

those second deeds; do you remember of doing that?

A. Yes, sir.

Q. By whom were you employed to get some second deeds? A. Mr. Kinkaid.

Q. Could you tell the number of persons for whom you took them?

A. There was quite a number of them, nearly all of them were— There was a large number, I don't remember just how many; I had to run all round over town to find them.

Q. You are not able to give us the number of them, nor the names of the parties?

A. I think Gustave Link and his wife; perhaps all those that I mentioned before were part of those, but I would not be sure of that.

Q. Do you recall now Mr. Kinkaid giving you any reason for those second deeds?

A. No, I don't know any reason.

Q. And were you paid for your services?

A. Yes.

Q. By whom? A. Mr. Kinkaid.

Q. Who prepared those deeds?

A. Those deeds were all prepared by Mr. Kinkaid.

Q. And your part was simply to have them acknowledged before you? A. Yes.

Q. With reference to the timber and stone claim you made, about which you have been asked, I will ask you a few questions that I have asked all entrymen and that is as to whether or not at the time you filed upon that land, when you made your original

(Deposition of Louis M. Pritchard.)

application for purchase, did you have any kind of an agreement, express or implied, written or oral, with any firm, or corporation, by which you had obligated yourself to sell, transfer, or assign to any of such persons, firm or corporation, or to any person they should direct, any interest in the title which you might acquire from the United States, or any interest in the timber situate upon the land you might acquire?       A. No, sir, I had not.

Q. Did you have any such or similar agreement at the time you made your final proof?

A. No, sir.

Q. Did any person other than yourself have any interest or lien upon the land you acquired, at the time you filed upon it, or at the time you made your final proof?       A. No, sir.

Q. And the statements that you made at the Land Office at the time of final proof were correct, were they not?       A. I think they were.

Q. It is charged in this action that we are trying that you entered the land in question, specified in your final proof papers, at the instance of, and at the request of the defendants in this action; is that true?

A. I did not enter in the interest of the defendants or any of them, or for any other person.

Q. It is also charged that you made the entry for the benefits of the defendants, or some of them; is that correct?       A. It is not.

Q. It is further charged that you agreed with the defendants, or some of them, prior to filing, and at



(Deposition of Louis M. Pritchard.)

the time of filing that you would make such application of purchase, and that you would further, at the solicitation and request of the defendants testify falsely at the Land Office, and procure title, and turn the land over to the defendants, or such persons as they might direct; is that true or false?

A. It is false.

Mr. BUNDY.—That is all.

Recross-examination.

(By Mr. GORDON.)

Q. Do I understand there are between 45 and 55 second deeds to the land involved in this lawsuit; what is your best recollection as to how many of those second deeds you secured?

Mr. BUNDY.—Object to the statement that there were 45 or 55 second deeds.

Mr. GORDON.—I understand there were between 45 and 55.

Mr. BUNDY.—Do you mean that there is anything in this evidence to show that there were between 45 and 55 deeds?

Mr. GORDON.—No.

Mr. BUNDY.—I object to you assuming.

Q. (Mr. GORDON.) Answer the question.

A. I don't remember; there were several of them.

Q. How many?

A. I think there were certainly at least eight or ten.

Q. Is that all you remember of?

A. I don't remember of that many specific persons, but my knowledge of the running around I did

(Deposition of Louis M. Pritchard.)

and the facts of it—my general knowledge of it was that there was at least that many.

Q. Do you remember whether or not you got a second deed from Walter Joplin?

A. I can't tell whether I did or not, because I don't remember what ones they were, except in a very few cases where something particular called my attention to it.

Q. Do you remember Andrew Joplin?

A. No, I don't.

Q. Do you remember whether you got a deed from him at all?      A. No.

Q. Do you remember whether you got a deed from Mrs. Sonora Joplin?      A. No, sir.

Q. Do you know William Gifford?

A. I have heard the name, but I don't know him personally.

Q. Do you know whether you got a second deed from William Gifford and his wife?

A. I have no recollection of anything like that.

Q. Do you know Samuel Greig, and his wife Sarah Greig?      A. Yes, I know them.

Q. Do you remember if you got second deeds from them?      A. No.

Q. You would not say that you didn't get them?

A. No.

Q. Do you remember Charles Ballantyne?

A. I don't know him personally.

Q. Do you remember whether you got a second deed from him?      A. No.

Q. Do you know Abel Edward Hunter?

(Deposition of Louis M. Pritchard.)

A. Yes.

Q. Do you know if you got a second deed from him, or not? A. No.

Q. But you would not say that you didn't get one? A. No, I don't remember about it.

Q. Did you give them any reasons when you went to get these deeds for asking them to make a second deed?

A. Well, I told them that the parties had requested it, and that I had been requested to do that, that is all the reason I gave them.

Q. Did you have the original deed returned to them? A. Yes, sir.

Q. Did you return it to them in all cases, or did you destroy it in some cases?

A. I would not be sure about that, one way or the other. If I destroyed them, I destroyed them in their presence.

Mr. GORDON.—That is all.

Redirect Examination.

(By Mr. BUNDY.)

Q. During the time you were employed by Mr. Kinkaid in the purchase of these timber lands, I will ask you as to whether or not you were devoting all your time to that, or as to whether or not you were carrying on other legal business at that time?

A. I was doing a general legal business.

Q. And this simply constituted a part of your business? A. Yes, sir.

Mr. BUNDY.—That is all.

[**Deposition of John Kinkaid, on Behalf of the Defendants.**]

JOHN KINKAID, a witness called on behalf of the defendants, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. BUNDY.)

Q. Mr. Kinkaid, you, I believe, were named as one of the defendants in this action?

A. I believe so, I never saw the complaint; I was never served.

Q. You never were served?

A. No, sir, I have never seen it.

Q. Where do you reside now, Mr. Kinkaid?

A. I reside at Rawhide, Nevada.

Q. And what is your business?

A. Law practice.

Q. Where did you reside before you went to Rawhide?

A. I formerly resided in Colorado, not going back too far. I began to practice law in Colorado in 1880, and from that time on until 1898 I practiced law in Colorado, always in mining districts, and in the mining states, and was always in the mining business.

Q. Then from 1898 where did you go?

A. I went in 1898 to Idaho, early in '98, or the last of '97, I became interested in a mining property in the Boise Basin, Idaho, Boise County. I took over a lease and option on that property, and I was

(Deposition of John Kinkaid.)

paying for the work on the property until in the summer of '98, then I concluded I could manage that property better myself, and I went out there to see about it, and I stayed there several years, and was mining several years in the Boise Basin, in Idaho.

Q. Did you during that time practice law to a considerable extent in Idaho?

A. No, I never practiced law in Idaho; that is I never offered to practice law in Idaho; I recognized the fact that one should not be doing anything else but the law business, and I was also in the mining business, and although I was admitted to the Bar in Idaho I was not practicing law. I did some business for some Colorado men, and some intimate friends, for which I was paid excellent fees for what I did, and then I did some trivial work in connection with these timber claims that might be considered legal work, but I considered it a small thing at the time.

Q. Where did you live, in what city were you carrying on your operations in the Boise Basin in '98?

A. I lived in the Boise Basin from '98 until 1901, I was in Boise Basin constantly; of course, I was in Boise City, but not very often, and I would be there more in the winter than in the summer; I was doing business up in the Boise Basin.

Q. Did you maintain an office at Boise, or a residence, or anything of that kind?

A. No, I did not; I was carrying on a lot of things up there; I invested a lot of money up there, and it was a permanent investment; of course I

(Deposition of John Kinkaid.)

never got out what I put in it, something like \$75,000.

Q. Was that in the Boise Basin?

A. Yes, in mining operations.

Q. Were you elected to some State office in 1906?

A. Yes, in the fall of 1900, I had made a failure then in the mining operations that I had up there pretty generally. I don't want to make this too general, but to explain the situation; it had gotten so that it was very hard for me to meet my mining obligations at that time because my partners had quit; the operations had not succeeded as I thought they might, and they had seized upon the idea that they wanted a Democrat from outside of that whole country up there and I was elected to State Senate. I didn't want the thing.

Q. That was in the fall of 1900?

A. Yes, in the fall of 1900.

Q. And you attended the legislature session which convened the forepart of 1901, and lasted until the usual time?

A. Yes, 60 days.

Q. During the time that you were serving in the legislature, and up until the time it ceased, had you looked into the timber question in the Boise Basin, and vicinity with view to buying it?

A. No, not in any way.

Q. Did you know anything about the Timber and Stone Act and what was available under it, in the Boise Basin, at that time?

A. I had never really paid any attention to it; I was a lawyer and mining man and the timber and



(Deposition of John Kinkaid.)

stone entries didn't interest me; I don't suppose that there was any other mining law that I didn't know about.

Q. (By Mr. GORDON.) Mr. Kinkaid, your term in the legislature ran from sometime in January, 1901, until sometime in March, 1901, is that correct?

A. That is the active term when we drew \$5.00 daily.

Q. (By Mr. BUNDY.) But you served for two years?

A. Yes, but there were only 60 days, it began about the 6th of January and ran for 63 or 74 days.

Q. After your active term in the legislature in the spring of 1901, what did you next do, Mr. Kinkaid?

A. I returned to the Boise Basin as I stated, and I had a quartz-mill in the Boise Basin at that time, and I had a ten-stamp mill there at that time and I think I got a small mill after that time, after the legislature; yes, I know I did it after that time.

Q. Did you ultimately move to Boise and establish an office, or residence there?

A. I was just trying to think. I stayed there in the Basin until—it must have been I think in September, 1901, it may have been August, or somewhere along there, and I ran this little mill that I had, and I also ran the ten-stamp mill, and sold them both to Mr. Bowen. Samuel Clark—a large placer miner at Centerville, and a very intimate friend of mine came to me, and wanted me to take up some of

(Deposition of John Kinkaid.)

his litigations in regard to that business, and I would not do that because I knew that if I began any such work of litigation, I would be tied down again to law practice, and I didn't want to do that, but he did induce me to procure his patents upon about 700 acres of mining claims. I may be mistaken as to the number of acres, but I think it was 6 or 7 claims, and they might have been anywhere from 20 acres up to 160 acres. The Land Office records there will show it, and I procured those patents for him, and when I went to Boise at all I went down there to finish that work for him and also some mining sales that I had on hand myself.

Q. Will you tell about the time you went to Boise?

A. I am uncertain about that, but it was sometime anyway in the summer or fall of 1901, but time is rather hard to remember.

Q. At that time when you went to Boise, had you become interested in any manner, or had you learned anything about the entries that were being made, or the prospective entries under the Timber and Stone Act in the Boise Basin?

A. I knew about the timber in the Boise Basin; any man of any observation knew about the timber, but I went there as a *mining* and for the purpose of mining. It was supposed to be a good mining country and has been one of the most productive mining countries in the world.

Q. What was the attitude of the mining element with reference to this timber?

(Deposition of John Kinkaid.)

A. Well, that came up afterwards; I learned of that afterwards. I remember that while I was there that summer, and before I had sold my ten-stamp mill, that the timber was afire, on the other side of the mountain, on the Centerville road, and I mention this because that has been charged in this matter as showing a great deal of interest on my part, and I fought the fire there for a month; sometimes I fought it alone and sometimes I hired men, eight or ten men, and sometime when the fire was the worst, men came and helped me, and some I paid and some would not take pay, some citizens sent men to me. The primary object of my fighting fire was that if it came over on my side it would burn down my mill which I had sold, but for which I had not got my money, and the other object was to prevent that destruction and waste that any man would do, and I was a citizen there, and belonged there. I went to Mr. Bowen, took up this matter for Mr. Bowen for patenting that property in connection with himself and Mr. Goldtrack, I don't know what his first name was, and he gave me money for that purpose, and I deposited it in the First National Bank from time to time as he furnished it to me, and that was I think the only account I carried in the First National Bank at that time. I had carried an account before in the mining operations there, I had carried a good many thousand dollars and had done a good deal of business there. I was away from there 35 or 50 miles, and I had done a good deal of that business with cash only. That account was in the name of S. C. Bowen and

(Deposition of John Kinkaid.)

John Kinkaid, agent; it was an agent account, at least it was for that purpose. I closed that account about November or December, 1901, when I entered his ground for patenting, and now, I think I remember that I paid about \$1,900 for the land that I entered for him, and that would be at the rate of \$2.50 an acre.

Now, leading up to the first I ever heard of timber, or the timber locations, was when I was in Long Valley in 1900, and that is in Boise County, when I was campaigning up there in 1900; they told me then that that country was being taken up and quite generally by outsiders, and under the Timber and Stone Act.

Q. That was a valley other than the Boise Basin?

A. Yes. That was in Long Valley, and those entries were afterwards known as the Cobban entries, and were afterwards acquired by the Fayette Lumber Company. It is a matter of common knowledge that there were locations being made up there. In the summer or fall of 1901, Mr. Clapp, a Minnesota man, an elegant gentleman, whom I met at Boise, and one John Frazer came to me and said, "Don't you want to go into the timber matter"? And I said, "I don't know anything about the timber matter, and don't know as I do. I have always been in a mining community and I don't know as I want anything to do with timber," but they told me that they had cruised out a lot of that country up in the Boise Basin, and that there was some very good timber up there which I knew, and they said they

(Deposition of John Kinkaid.)

would file me for \$200, and I thanked them; and that was the first I remember of ever having anything to do with timber. I didn't know anything more about it until I was up in the Basin one time about November or October, 1901, with Mr. Ingalls a mining man from Texas. Mr. Ingalls was of the firm of Ingalls, Hoggins Brothers & Ford, owning a big mining estate in the Boise Basin above Grimes Creek. They had invested, perhaps, \$100,000 there at that time, and gotten property that was supposed to be very valuable, but it was what we called a "base" proposition; most of the ore in the Basin is free and can be milled on the ground. Mr. Ingalls' property was base, and was not free, and could not be milled in the vicinity; it was an ore that had to be smelted, and it carried a great deal of lead and zinc, and some gold, but it was not free, and it became necessary for them, to save their investment up there, to have a railroad in there, as that was the only way that that low-grade ore could be transported to the smelters. Mr. Ingalls, J. M., were his initials, was the active member of that firm of Ingalls, Hoggins Brothers & Ford, and they are bankers at Brownwood, Texas.

I was up there with Mr. Ingalls in the Basin, in October or November, 1901, upon some of his mining business. At that time or subsequently, I patented his ground, I think 6 or 7 lode mining claims for him, for which he paid me. I took up some of their mining patents that had lain dormant for about ten years to my recollection, and straightened them out in the



(Deposition of John Kinkaid.)

Land Office, and procured their patents, I don't think they paid me anything for that, but they were quite willing to do it, they were very good friends of mine, and I didn't charge them anything for that.

When I was up there with Mr. Ingalls in November or October, 1901, we talked the railroad business over and he was in favor of building a railroad into the Basin, and that is what we were going up there for, the railroad proposition for him and the mining proposition. He believed that he could promote the road and he knew their properties were worthless unless he did. As we came through Centerville one morning towards Boise, John I. Wells, this same John I. Wells, who has testified here, came to the rig, and Mr. Ingalls was paying for that, it was on his business, and he said, "I have missed the stage, and can I go down with you to Boise." That was some 40 miles to Boise, and Mr. Ingalls says, "Yes, you can go down if you pay for it," and he got in the seat and rode down to Boise with us. That is the first time I remember of distinctly knowing who Wells was. There was a great number of the Wells in the Boise Basin, five or six brothers of them, but this one, John I., I had seen him before, but I didn't know who he was. I was not acquainted with him, and going down to Boise I asked him what he was doing, and he told me that he had been working in the Twin Sisters mine, he said, "I met you up there at the Twin Sisters mine." The Twin Sisters mine is a mine run by a Colorado friend of mine named Lane, and I had frequently been there; I ate dinner there one evening



(Deposition of John Kinkaid.)

with the rest of the men at the mine, and there's where I met Wells. Wells told me about a mining proposition near Boise that he had seen several years before, and he got me so much interested in it that I proposed to him that he show me that proposition, and we went the next day to see it. I hired a team and we drove out north of Boise, I suppose it was in those hills where they do theoretical mining and Wells told me about an 11-foot vein out there that he and his father had worked on when he had first come from Kansas, six or seven years before. But it was strange to say that the vein was not over six or seven inches wide when we got there and when we returned to the stable, I went to pay for the team I remember and Wells insisted upon paying for it and we divided the fees between us, because he was ashamed of what he had showed me out there. That was my first acquaintance with Wells. Subsequently I had some business in Boise Basin either for Mr. Ingalls, or for Mr. Bowen, or for myself, I don't know which, or it might have been for somebody else, it was mining business anyway, and I there met Wells and Downs.

Q. (By Mr. GORDON.) When was that?

A. That was either in,—as near as I can place that, Mr. Gordon, that was very soon after this other trip, and it was either in October or November, 1901, and I had heard a story when I was there before that the Basin country was being overrun by outsiders, that that country was being colonized in a timber way; that people were coming in there from Wisconsin and Minnesota, and from elsewhere, and filing

(Deposition of John Kinkaid.)

on timber under the Timber and Stone Act, and that they were also locating homesteads, evidently for the purpose of taking timber, and that it was an outrage upon the Basin people, and they asked me if something could not be done about it. Mr. Ingalls took a very strong ground himself against it, he did not believe in them filing upon the timber. This was still in 1901. When I was there this second time, I was frequently there during that time on my business, I met Wells and evidently it was Downs with him; I don't remember if it was Downs, but it was Wells, and some other man who wanted to file me on timber, and show me timber, and I told them I thought I knew as much about that timber in the Boise Basin as they did; that I had worked all over that country and mined all over it for the last two or three years, and I didn't think I needed their assistance to show me the timber in the Boise Basin. They said that was very well and good, but they asked me if I knew where the corners were and I said, "No, I don't know anything about the corners, but I guess I can find out," and they joshed me more or less about it, and afterwards they came to me the next day, I think, and they said, "You better let us show you some of that timber," and I said, "Where have you fellows been locating people in this country?" and they said, "Up above Centerville," and I asked if they had been locating any below and they said they had not, and I asked them where the State lands were in the Boise Basin and they told me where they were. The State lands were supposed to be worth

(Deposition of John Kinkaid.)

about \$10.00 an acre. I don't testify to this positively, but it was my belief then, and is yet, that the State school lands, or some of the State lands in Idaho are limited in price to \$10.00 per acre, that is the minimum; that is what I believed then, and I believe it yet; but I told them if they could show me a quarter with plenty of timber, below Centerville three or four miles, south of Centerville, down Grimes Creek, and adjoining the State lands, or near the State lands, I would like to look at it, but that I would not obligate myself to pay them any filing fee unless I concluded to file, and under those circumstances they went down there and showed me the land. That was the time that I saw the land that I subsequently filed on.

Q. That was in November, 1901?

A. In October or November, 1901. I was up there frequently before and frequently after that and until the season closed, until the weather got too bad. I returned to Boise and nothing was ever said to me about filing until sometime after that Mr. Wells moved down there, or came down there, and he came and asked me if I would not file, and I told him "No," I would not file, but I told him that I would pay him for his time that he was out on that trip, but I would not pay him \$25.00, but I would pay him regular wages, and his partner, but he said, "If you don't file, there is no charge," and that was all that was said about that until I heard a great deal of talk about them locating people in the Basin, and about them taking the timber, and along about the first part of

(Deposition of John Kinkaid.)

December, there arrived in the Basin three or four fellows whom I didn't know at that time, but it was Arthur Anderson, Bert Nugent, Abel Edward Hunter. I knew Abe Hunter—and after they had been in town some time—I had met Hunter and seen them on the street together, and I had seen them at the old Overland Hotel there, they were drinking quite freely, that is Hunter, and Nugent and Anderson were drinking quite heavily, and that young man Ball,—I don't remember of seeing him with them; Harry Wells was down there at the same time I remember that now, but I don't remember of seeing him with them; he was one of those men that entered there sometime in December, but either John Wells or Ed Hunter brought those fellows up there, Anderson and Nugent, brought them to my room, I had no office, as I didn't expect to stay there, I was not practicing and was closing up the business that I had in the Basin, and they brought them up there to my room in the Coffin Building, sometimes called the Pioneer Building there on the corner, and they told me that they were going to file on timber and they wanted to know whether they had a right to do it, or not, and I told them that they certainly did have a right to file upon timber lands if they wanted to and that was what those fellows up there ought to do instead of letting people from Wisconsin and elsewhere take up the land; it was their business to take it up and they then told me that they had filed sometime before, and they had come down there then to prove up, but that everybody in the Basin said that they

(Deposition of John Kinkaid.)

had no right to prove up and that the man who proved up on timber land in the Boise Basin would be a liar and a perjurer, and that he would have no right whatever to the land, and that he would lose his money. And I told them that I understood that the law was the same as any other land law, that a man had a right to it if he had complied with the law properly, but that if they had commit perjury to get it they had better leave it alone, and they said they didn't want to do anything of that kind but they said it was claimed that it was mineral land; that question had been agitated a great deal in the Basin; it touched the pride of the people in that country for they had occupied it as a mining country for about forty years, and it hurt their pride to have it taken up as timber land, or agricultural lands or for any other purpose than mining. They believed that that was their heritage up there, they believed that it was only for mining, and we discussed that question very thoroughly as to whether it was mining ground or not, and I inquired of them whether that ground that they were locating, that they had filed upon, was down in the gulches, whether it could be placer mining, or whether it was up in the hills where it would likely be quartz mining ground, and they told me it was up off the placer ground, and away from there, and Arthur Anderson particularly told me where his ground was, that it adjoined his ranch, as he called it, a little place he had up there, with a garden, and that it was right near his placer claim, but that it didn't include any placer ground. I asked him if



(Deposition of John Kinkaid.)

he was getting it for the purpose of placer, and he said, "No," there was no placer there, and I asked him if there had ever been any prospecting there for lode claims, and he said nobody had ever found anything there. I went then to Mr. Garrett and got a copy of the Land Office's rules and regulations, which contained excerpts of law, as I had no law library there; my library was then at Cripple Creek, as it is yet; and from these rules and regulations I saw that Timber and Stone Act and the obligations and promises to be used under the same, and everything was there except the cross-examination, I don't think that is in the rules and regulations.

Q. (By Mr. GORDON.) Now, when was that?

A. That was in December, after these men Anderson and Nugent had been in Boise for several days, and I think it was the day before, or two days before they finally entered their claims, and paid for them, made final proof on their claims. That was what we always called it in the mining practice, an entry, or what I always supposed was an entry, and what bothered them the most was this: They believed they could not make a nonmineral affidavit, and I told them that was a matter of their own judgment, and conscience, and that all they had to testify to was that the ground was more valuable for the timber than it was for mining purposes. I gave them the rules and regulations to read for themselves, and they claimed that they had been misled; that John I. Wells had gotten them to file on claims and that they believed they had a right to do so and they believed



(Deposition of John Kinkaid.)

now that it was really mineral land, and that they had no right to enter it, or that no man had a right to take up timber lands under that act. They said that Carl Payne, I think that they told me that Carl Payne, who was District Attorney of Boise County at that time, a State office, or County office, under the State Government, had advised and stated that no man could honestly make a timber entry in the Boise Basin or elsewhere. I think that that was the first time I ever heard that. I know that that was told me either then, or at some subsequent time, and I know that it was told me also by Homer Granger, that Payne had said that, and had advised that, and they were afraid that if they made a timber entry or final proof for timber in any manner, that they would be guilty of perjury, and that they would be prosecuted for it, and I told them that as far as the taking up of mineral ground was concerned, to settle that for themselves, but I didn't think that land that had not shown anything in forty years under intense mining prospecting, as had been done in the Boise Basin, could be said to be mineral lands.

They came back to my place, two or three times, and they were very much excited. Mr. Nugent did most of the talking and Mr. Anderson said very little; he did, however, tell me,—I asked him about their money, I asked them if they had their money to prove up, and he said they had, and Mr. Anderson said he had gotten \$900 out of his last clean-up, meaning mining clean-up, and that he had enough to enter his claim, he thought. I told him when he came back

(Deposition of John Kinkaid.)

to ask me about it again, I said to him, "You don't seem to have any confidence in what I tell you; you are not paying me anything for this advice, and you had better go to someone you know, to the best lawyer in the State, go to anybody, and advise with him about it." He asked me if Mr. Hawley was in town and I told him I thought he was, and he said he knew Mr. Hawley and that he would do whatever Jim Hawley said was right. The principal thing that agitated them at that time was to get back the money that they were out, and if they didn't prove up on their claims, they said they were out the fees they had paid, to Mr. Wells and that they were out about \$100 upon the trip, either \$100 for the two, or they were out \$100 each, I don't know which, but they said they were out a lot of money on their trip down there when they had made their filing, and that if they didn't prove up that John I. Wells had to pay them back, and they said if they didn't make proof,—that Wells had filed a lot of other men up there and held them up for as much money as he had gotten out of them, and that he would have to pay them all back.

Q. (By Mr. GORDON.) Was that Mr. Anderson and Nugent said that?

A. Yes, they were together; they told it to me and repeated it over and over again, and they went away and subsequently, and I suppose in the afternoon of the day they filed, I don't know what day they proved up, but whatever day they proved up, John Wells came to me in the afternoon about one or two o'clock I think, and he said to me: "Those fellows have

(Deposition of John Kinkaid.)

proved up and they want some money to go home on; they are broke and want some money to go home on, and they still owe their hotel bill over here, and some other bills, and they think I am made of money," and he said, "I agreed to give them some money, and I agreed to give them \$300, they want \$150 apiece," and he says, "I would like to give it to them, but I haven't got it to spare; I have got to make my own final proof within a few days, and I haven't got the money to spare," and so, he said, "Here is \$275," or whatever it was he gave me and told me it was all he had with him; he gave me that money and he said, "You give that money to them because I told them it was to come through you," and I said, "Why did you do that"? and he said, "I wanted to get rid of them," and I told him I didn't want anything to do with the matter, and he said, "You see to it for me, and get me something to show for my money," and afterwards, at three or four o'clock in the afternoon, they came back to my room, Nugent and Anderson together, and they were very well pleased; they came and told me that they had entered and paid for their land; they said they were "damned" glad of it, that they had a right to that land and that they, up there in the Basin, should have it rather than some rank outsiders, and Mr. Anderson told me then, or before then, that he was going to hold that ground and cut the timber all himself for cord-wood, or for timber purposes, and he said, "Did Wells leave any money here for us"? and I said he had, and they said, "How much"? and I told them

(Deposition of John Kinkaid.)

he left \$275, but I don't think I told them that at first. They said, "We have got to have some money to go home on and he promised to see us out if we finished up this entry," and they said, "He promised to let us have \$150 apiece," and I said, "This is all I have got and I will divide equally between you," and I paid them the money, handed it out to them, or whatever you care to call it, and took a due bill for Wells, from each of them for \$137.50, I think, I can't give the exact amount, but I believe that is my recollection. I divided it equally between them just the amount he had left, and I took the due bills and they were signed; I think Mr. Anderson could write his name all right, and I think he could have written it then all right, but Mr. Nugent signed both due bills, and Mr. Anderson made his mark on his, and I don't know whether I witnessed it or not; but those two bills I saved and when I saw Mr. Wells again I gave him the due bills, and they thanked me and said they thought John Wells was a man of his word, that although he hadn't left them \$300 that he had agreed to, that he had treated them well anyway. Then they went away. I think I saw those men the next morning, at least Arthur Anderson, and he was sober and very gentlemanly, and I bade him good-by the next morning, and went home.

Now, previous to that, the day before their final proving up, whatever day it was, we will say December 10th, 1901, Wells had come to me and told me, and I think it was on the street, and I believed at the time that he really wanted to rush the filing that I

(Deposition of John Kinkaid.)

had talked about making, and really to enlist my sympathies and service with more or less, to get me to file, or get my filing fee, and he had asked me about this self-same matter, and about Anderson and Nugent; I don't know as he named those parties, or I inferred that it was Anderson and Nugent that was trying to get money out of him, but they never told me that they were trying to get money out of him, and I was the last man that would have told that; they either told him that they had the money or they led him to believe that they did have the money to make the entry, and Mr. Wells asked me whether he had a right to lend them the money, or not, to make their proof, and I told him that he had a perfect legal right to do so, and that they had a perfect right to borrow the money for that purpose if they wanted to, but I told him not to lend them money under any circumstances, for if he did, as I viewed it, because he would never get through with it if he started in to do it, and if he loaned one man money that he had filed, he would have to lend others, and if he loaned a great many it might raise the presumption that there was a fraudulent contract or agreement, which was absolutely prohibited under the law, but I would absolutely have nothing to do with them if I was in his place; and he said that he would not under any other circumstances, he would not think of doing it, but those were the first men he had filed, and that he was under obligations to see that they got their land, that if they didn't get their land, as they wanted to, that he would have to reimburse them and pay them



(Deposition of John Kinkaid.)

for their money that they were out, and for their coming down there, and that it would not only spoil all of the filings that he had made, and would bring down on him some 30 or 40 people, I don't know just how many he said now, but he said "A lot of people," and they would want their money back and damages, and Mr. Wells may have forgotten all about it, as he mentioned in his testimony here, but I remember it distinctly because it was my first knowledge of this matter, but I told him positively that while he had a right to lend the money, not to lend it to anybody, and he said that he would not think of lending it to anyone but those two, Anderson was good for it, and Bert Nugent was too, for he had worked underground with Bert Nugent for a year and that there was not a more faithful or honest fellow in that country than Bert Nugent, and he said if they hadn't been drinking since they came down there, they would have had plenty of money to pay for their proof, and I told him that under no circumstances to let them have the money.

Q. I will ask you as to whether or not from what Mr. Wells told you, you were led to think that he had entered into any agreement or contract for reimbursing them if they did not come through, or was that a moral obligation?

A. It was absolutely a moral obligation so far as I understood, but here Mr. Wells testified—he didn't seem to remember the stress under which he was placed at that time, or most of those first filings that he had made. He had a great number of filings



(Deposition of John Kinkaid.)

at that time, and if those first ones failed, those first ones were scared out of the Boise Basin, his occupation would be gone, his money would be gone, and he would be hounded to death by a great number of people for the return of it, if he didn't pay the money, and he was evidently laboring under a great stress at that time, and for that reason I was more positive with him, and because these men had come to him. They had never told him that they didn't have the money.

Q. Up to that time, the day of the final proof of Arthur Anderson and Bert Nugent, on December 10th, 1901, had you entered into any kind of agreement with any persons, or were you in any manner interested in procuring people to file upon lands or enter lands, which had been filed upon?

A. I had not, and could not have entered into any such arrangement because that was the first time I had ever seen Arthur Nugent or Bert Nugent, to my knowledge; I had likely passed them and maybe had saluted them, but didn't know who they were. I think they told me down there at that time that they had voted for me; the fact is if a man has an office, or has ever gotten an office, everybody votes for him,—after the election.

Q. Did you know at that time if anyone else had filed?

A. No, I didn't know of anybody filing and never heard of their filing until they came to my office or room, in December. I didn't know who had filed, I didn't know one man—I didn't know anybody had

(Deposition of John Kinkaid.)

filed. I never took Mr. Wells' timber business seriously at all, and I didn't think that he was filing many people until about this time he spoke to me about it and told me that he had filed a great number, and I think he said 35 or 40 people, and that he would be liable to them if it didn't go through.

Q. What was your next knowledge that you had with reference to the timber in the Basin, Mr. Kinkaid, or any connection with it?

A. I subsequently went up there; I had met Mr. Wells, I filed on my claim, and I made my filing upon the view that I had had of it in either October or November; the filing, I think, was in January, 1902. I don't know when it was. Soon after I made that filing or concluded to make that filing, I went to the Land Office, and got the filing papers, and spoke to Mr. Garrett about it, who was Receiver of the Land Office at that time; I presume that I prepared my papers myself, and I think that that was perhaps the first set of those papers that I saw outside of the book of rules and regulations, and after that I paid Mr. Wells the filing fee of \$25 and I asked him if I owed the other fellow that was with him when he showed me the land, I asked him if I owed him anything, and he said, "No," that they were acting together, and that other fellow subsequently proved to be Downs. I afterwards met him, and now that I think about it, about the end of the year or the first of January, I won't say which, but it was sometime after the Anderson episode, and I have tried since this trouble came up over this

(Deposition of John Kinkaid.)

timber, I have tried to remember when it was that William Sweet first spoke to me about the timber business, about wanting to buy some timber lands in the Boise Basin, and it was the latter part of December or the first part of January. Mr. Sweet was a mining man, a mining promoter and really a great trader and his habit of doing things was to make quick turns and quick mining sales. I had had quite a little business with Mr. Sweet prior to that time in a mining way. I had taken over from him the Mountain Queen mine on lease, bond and option, in the Boise Basin near Grimes Pass, and paid him some several thousand dollars for the option, and what he was out at that time, and had carried him for interest in the final outcome of the property; all together I expended something like \$12,000 to \$14,000 on that property and threw it up. Mr. Sweet didn't make any more money out of it, and I didn't, of course, and Mr. Sweet and I had spent the winter of '99, I suppose, maybe it was the winter of '98 and '99, and it might have been the following winter of '99 and '00, or most of the winters in Boise together. We had spent the winter of '98 and '99 there together, and we were very well acquainted, very intimate, and I am confident he had the utmost confidence in me, and I had in him in every way, and we were friends and sometime in the latter part of December, 1901, or the first part of January, 1902, Mr. Sweet asked me what I thought about his buying timber in the Boise Basin and I told him that I thought he had better let it alone unless he

(Deposition of John Kinkaid.)

could build a railroad in there, and he said he understood that either Ingalls with his Texas crowd, or the other company would build in the Basin, and that Moore's Creek could be run, in his opinion, that the timber could be gotten out of there all right. He said that he had seen the timber business in Michigan, and he knew that there was good money in timber, and no man had ever lost any money in buying timber lands, and so we joked about it a little bit at that time and subsequently he came to me, but I would not say whether it was in December, 1901, or January, 1902, and he said, "I wish you would look into that question and see if you can buy me some timber lands up in the Boise Basin, and I said, "All right, I will do it." And I said, "How much land do you want to buy?" and he say, "All I want is 2000 or 3000 acres or 4000 or 5000 so see what you can get," and I went to the Land Office and I discovered that there had been quite a number of claims entered in the Boise Basin and money paid for the land, and I quite likely got the names of those who had proved up on their claims and gotten the Receiver's receipts. I told him that there was quite a number of people had proved up and that if he wanted me to buy for him, to furnish me the money and I would see what I could do.

Q. (By Mr. GORDON.) When was that?

A. That was either the latter part of December or the first of January, 1902, I can't give those dates to save me, and I have no data now by which I can prove it. I will explain that later, but I haven't

(Deposition of John Kinkaid.)

the least bit of data to which I can refer; he subsequently brought me I think \$4,000, and said, "Go ahead now, and see what you can do," and I asked him what I should pay for the land and he told me to get it as cheap as I possibly could. He says, "I don't think those people will be very stiff on their price," and he says, "Under no circumstances, go above \$500 per acre, and I think I can stand for \$5.00 per acre, but I don't want to pay any more than I can help." I told him that the land would cost at least \$2.50 per acre to the Government, and he said, "That didn't make any difference," that land was worth what people could get for it, and that there was plenty of timber land in the country yet and that scrip decided what land was worth; he said he could buy scrip for less than \$5.00 a good deal, and lay it on that land; he said he had advised with his attorney and he knew that he could get it considerable less than \$5.00 per acre, and so I took his money and I either put it in the bank and if I put it in any bank I put it in the First National Bank of Idaho, that was the bank that I had always done business with it in the city, and they had always treated me very nicely there. And I endeavored to buy, and approach some of these people who had made their final proofs, or at least try to reach them, and I don't remember who it was whom I did reach now, but I found that the parties whom I spoke to about it, I think some of them were ready and willing to sell and I asked for their Receiver's certificates, or receipts, and I found out that they had



(Deposition of John Kinkaid.)

no final entry receipt; it was a plain receipt of the Receiver of the Land Office stating that he had received from them \$400, to be applied upon the entry if it was finally allowed, and no final certificate of entry or Receiver's receipt in the usual sense, as in a mining entry, or anything of that kind, with which I was familiar, was issued. I reported that to Mr. Sweet and told him that I would not take those titles, and I would not advise *me* to take them at all that way, and he said, "Why that is all right, you go ahead and take that title, and take those titles," and he said, "You are not my attorney," and perhaps I was somewhat forward in giving my advice where it was not asked, as an attorney, as a lawyer is likely to do, and he said, "I have consulted my attorney about it, and I am enough of a lawyer myself to know that I have a perfect right to buy, those people have a perfect right to sell and you go ahead and buy it," and I told him that I hadn't that I would do that, or would not do it, and I told him that when those people got their final receipts, which they undoubtedly would, that I would take the matter up and he said, "All right, any time will do," but he said he wanted something to do business on, that he wanted a "starter," he wanted the nucleus of the deed of something to sell, so that he could go east and sell it, and I told him that there was nothing at that time that he could buy in proper shape for a "starter" or otherwise, then he told me that he would get his money ready and have it on hands to buy when these people should get proper receipts,



(Deposition of John Kinkaid.)

but he well knew or believed that final certificates of entry had been issued in proper form to some of those people and others that I had not seen, and for me to look into that matter and if I found any who had their final certificate, I should buy them; in the meantime that he would get me as much money as he could to carry through the deal. He subsequently brought me over money and told me to keep quiet, that he didn't want anybody to know what he was doing; that he was going into the deal because there were men in town there who were perfectly willing to go into any deal in which he would furnish all the cash, but that he didn't want any partners of that kind, and sometime along there, I don't know when it was, I asked him what I was to make out of the thing, and what interest I was to have in the deal, and he said, "You are not to have any interest in the deal unless you put up for it," and he asked me if I could furnish half of the money, and I told him that I could not do that, I didn't want to go into it, and then he said, "Well, you have no interest in the deal," and I said, "Then what do I make out of the purchasings of these claims?" and he says, "I will pay you well for every claim you buy, you know I will do what I tell you." And I knew Mr. Sweet to be a very liberal man and also an honorable man in deals, and in trades, and that was perfectly satisfactory to me, and under those circumstances I did from time to time try to find parties who had paid for their final proof, and who had gotten final certificates, but I didn't find anyone

(Deposition of John Kinkaid.)

who had, or who wanted to sell. Some of them might have had their fival certificates when I asked them, but the first thing I asked them was if they wanted to sell and there were very few of them who would, and I don't know who those men were, I haven't the least idea. If I had a list of those men I might recognize them, but I don't know who they were. And he subsequently came to me and he got some of that money back and he said, "You are not very swift in buying these claims; I need some of that money." And some time along about the first of the year, as I remember it, 1902, and I don't know whether it was—it must have been in January, I learned that Governor Stunenberg and Sweet were becoming interested in some way together in trying to get up a promotion or deal to sell, to buy and sell the timber lands up in the Boise Basin. When Mr. Sweet mentioned it to me I rather resented it for the reason that I was confident from what he had told me that Stunenberg was not putting up any great amount of money for the purpose of buying lands, and I felt that Stunenberg had been taken into the deal where I might as well have been taken in, upon the same terms. Mr. Sweet explained to me, however, that Mr. Stunenberg could make the deal much more readily than I could, he said, "You are no promoter, and you could not sell this property and I don't know whether Stunenberg can or not, but I think he and his associates to whom he would dispose of this property, at least his reputation as Governor of the State, will very

(Deposition of John Kinkaid.)

greatly aid him, and you must not think anything of this; I will pay you for what you do and for what you have done, and that will be all right." Of course, we had this conversation aside from Governor Stunenberg. The first that I had to do with Governor Stunenberg was when Mr. Sweet brought him to my room I think—

Q. (By Mr. GORDON.) When was that?

A. Sometime in January, I should say, or February, 1902, and they told me together there that they had gone into together to take up this promotion, that they were being equally interested in it; that Mr. Stunenberg would put in a part of the money and Mr. Sweet would put in part, and they would get enough together to buy what they called a "starter," something that they could take east and sell, and something that would warrant them in believing that having those claims on hands, they would be able to get the surrounding claims which had been proved upon, or which should ever be proved upon thereafter. Mr. Sweet claimed to understand the timber business and he said the first men who got the first bunch of land in that district would be able to control the rest of it, whether the other parties wanted it or not, because he said there was not room in the Basin, or enough timber there for but one big operation, and that it would have to be a big outfit that ever could do anything with it, because until that railroad was built it could not be certain that it was going to be built, and that he might have to build a railroad himself, and it would

(Deposition of John Kinkaid.)

have to be promoted as a proposition in connection with it.

Q. Up to that time you learned that Mr. Stunenberg was connected with it, had you bought any claims at all?

A. No, I had not bought any claims; they had deposited with me, that is, Mr. Sweet had left with me several thousand dollars, I say several thousand dollars, I presume there was \$4,000 at one time, and I think \$3,000 at one time, and I don't pretend to give the dates of these at all.

Q. (By Mr. GORDON.) You don't pretend to give the dates, but was this prior to your learning of Mr. Stunenberg's connection with it that he gave you this \$4,000 and \$3,000?

A. No, he gave me the \$4,000 at least,—no, he gave me \$4,000 at one time, before Mr. Stunenberg came in.

Q. (By Mr. GORDON.) And you would not be certain about the \$3,000?

A. Now, I do remember that \$4,000 was \$5,000; he brought me \$5,000 one day and left it with me to buy land with, then he said, "Give me \$20.00 out of that." I gave him \$20.00 out of it, so the amount that I got from him at that time was \$4,980, and I think I went across to the bank right across the street and deposited that to my credit over there.

Q. (By Mr. GORDON.) Did he give it to you in cash or a check?

A. He gave it to me in cash; it was in big bunches of money, and I took it across and deposited it in

(Deposition of John Kinkaid.)

the bank. After Mr. Stunenberg came into the transaction, Mr. Stunenberg seemed to resent my having anything to do with it, even more than I had resented his having anything to do with it, and he didn't want to deposit any money with me, and I don't think he ever did leave any money with me, but Mr. Sweet told me to settle with the Governor, or give the Governor what money he wanted and let him deposit it as he saw fit.

Q. (By Mr. GORDON.) Did that instruction that you received from Mr. Sweet with reference to giving Mr. Stunenberg the money as he saw fit, have reference to the \$4,000 that he gave you, or was that confined to this \$3,000?

A. It had reference to any amount which Mr. Sweet had left with me; I think that subsequent to Mr. Stunenberg going into the deal that they went to some bank and I have heard since that it was the Bank of Commerce that they went to, and borrowed either \$7,000 or \$7,500 together, in order to have this money on hands to buy property and their idea was that it would take anywhere from \$10,000 to \$20,000 to get what land they would have to have in order that Mr. Stunenberg might go east and sell the property, something that he could call to the attention of eastern people, a lumber company, something that they would be willing to buy, and something out of which they could make a profit, because he said as soon as they turned the thing over they would be out of it, and I think that perhaps that \$4,000 that they gave me, when they brought that up to my place



(Deposition of John Kinkaid.)

and gave it to me they said, "You take care of this and deposit it in the bank because we don't want you to keep it here because you have no safe," and I got that money and I don't think I ever got any other money from Mr. Stunenberg and I think I got that from Mr. Stunenberg and Mr. Sweet together, and I took that across to the bank; I didn't get any more from Mr. Stunenberg at that time; I am telling these things as they come to my mind; I am trying to testify now as I remember it.

Q. (By Mr. GORDON.) Now, this first \$4,000 that you have been talking about last, that you said you got from Mr. Stunenberg and Mr. Sweet, that does not have reference to the first money that you received from Mr. Sweet amounting to \$4,980; that is an additional \$4,000?

A. Yes, sir, and there is another matter—Mr. Sweet went away and that is a matter that I don't think the Government or any of you brought out at the Borah trial, or any of the other matters; I have never heard it mentioned, but there was \$3,000 sent me by Mr. Sweet before,—I think that was before Mr. Steunenberg ever went into the deal.

Q. (By Mr. GORDON.) Then, that made upwards of \$8,000 that you had gotten from Mr. Sweet before Governor Stunenberg went into the transaction?

A. Yes, about \$8,000, or it might have been \$9,000, but when I didn't buy those lands I returned most of that money to Mr. Sweet when he came back for it. Now, when that \$3,000 was sent me from



(Deposition of John Kinkaid.)

the east, somewhere, and by the "East" I mean somewhere east of Boise, Idaho, and I don't know where it was, but Mr. Sweet sent me that money thinking that I was buying land, because he had instructed me to do so; he had only left a small amount of money with me, and when he came back from that trip wherever, and whenever it was, I had not used that money and I gave it to him from time to time as he asked for it, and I gave it to Mr. Stunenberg, if he was in the deal at that time. I know this, that as soon as Mr. Stunenberg came in, all of the funds were turned over that I had to Mr. Stunenberg; he didn't want to entrust any money with me, and he didn't leave any money with me at that time. I had known Governor Stunenberg but very slightly before that, but we had never had any business transactions of any kind, but he had been the Governor when I came into the State, and for sometime afterwards, and I had met him in his official capacity only and in a friendly way, and I must say that he had been extremely courteous to me, and I have always had the greatest admiration for Governor Stunenberg, and after I came to know him well I had the greatest liking for him, but that was afterwards, and quite a time after January, 1902, that I became better acquainted with him.

Q. (By Mr. BUNDY.) The bank account shows a deposit of February 10th, 1902, of \$4,480, and I was wondering whether that \$4,980 was \$4,500, was that a mistake the first amount. I will show what purports to be a copy of the deposit made by you in

(Deposition of John Kinkaid.)

the First National Bank, and I notice it is \$4,480 instead of \$4,980, weren't you mistaken in the amount?

A. I don't see that that makes any difference, but since you called my attention to it I believe that it was \$4,500 that I had in mind; the amount which was brought to me was in bank packages of perhaps \$1,000 or \$500 packages, and my recollection attaches now more to the \$20.00 which I drew out of there and gave to Mr. Sweet of his own money, than it does to the amount, the other amount. I think the date of February 10th, is the correct one, I think that would be the amount and the date. But my recollection refers more to the \$20, than it does to the larger amount.

Q. (By Mr. BUNDY.) Now, I suppose probably the material thing is to find out what ultimately became of this money and whether you bought any titles with it?

A. Ultimately I returned every dollar of that money that I got from Mr. Sweet, or from Mr. Sweet and Governor Stunenberg, to either Mr. Sweet before Mr. Stunenberg came in, or to Mr. Stunenberg or Mr. Sweet after Mr. Stunenberg came into the deal.

Q. Did you buy any titles at all from any entrymen or entrywomen, or pay out any money to any entrymen or entrywomen out of those funds you have testified to before June 1st, 1902?

A. I didn't buy a title, and it was very unsatisfactory to both Mr. Sweet and to Mr. Stunenberg, and while Mr. Sweet and I were very intimate

(Deposition of John Kinkaid.)

friends, and thought a great deal of each other, as I understood it, Mr. Sweet lost patience with me, he said that I was not a real estate man at all, and I told him that I would admit that and he told me that I was too conservative, and that I was not enough of a rustler, and I joked him a good deal and said some very sarcastic things to them about it, about their going into the timber business, or their selling something that they didn't have or hadn't bought, and while I think Mr. *Sweet* were on very good terms as we were before, in a general way, he never wanted to transact any more business with me; that was the last business we ever had as far as I can remember now.

Q. (By Mr. GORDON.) When was that?

A. That was in the early part of 1902, and must have been in January, February, or March, and maybe it ran up until the first part of April. I know this, and if I don't cover the ground, you can ask me any questions; I know that I tried there for some weeks to find somebody who had claims to sell, who had really a certificate of entry, and I didn't find anybody, and afterwards, sometime during that time I discovered that no one had any final certificates of entry, and those people who had entered up from the Boise Basin,—and I had believed that they had only refused in some instances to give final certificates, but afterwards, it was discovered that there was a general order as I remember it, applying to properties all over Oregon, and there was a great deal in the newspapers at that time about timber frauds in

(Deposition of John Kinkaid.)

Oregon, and it seems that a general order had been issued, notifying all entries that they would take all filings and that they would take the money, but they would not issue the final certificates of title, and afterwards that final order was revoked as to the Boise Basin, I think, or as to Boise County and released the Fayette, as I understand it, at least I was told it. I learned that at the Land Office from Mr. Garrett, or some of them; I don't remember who, and I don't know who the Register of the Land Office was at that time, but I think it was Mr. King; I learned it from the Register or the Receiver that there was a general order of that kind; and I quit looking for people who had things to sell for I knew that they had nothing that I could buy, and I reported those facts to Mr. Sweet and to Mr. Stunenberg, and I was getting ready soon after that—I suppose I had better explain it fully; there was a mining excitement brought about in the interior of Idaho, called the Thunder Mountain excitement; that really occurred in the fall of 1901; there had been an old mine out there for several years, it had been working, but the excitement began and the boom started, and the rush in there began when it was the most difficult; I don't know of any more mountainous, rugged, or forbidding country in winter or a more difficult country to traverse in winter, and I have been over most of the Rocky Mountain District, than the Thunder Mountain district in Idaho County, Idaho, and when the snow is the deepest and the place the farthest away, and it is the most dangerous to life and limb to get

(Deposition of John Kinkaid.)

into an alleged mining country, is when the boom is the strongest. During the latter part of November, when the snow began to get deep, that boom in there started up and it was carried on all that winter, and people started in there with hand sleds, and traveled for weeks and months, and months, at a time, to get in there, and it was believed that a great mining district had been discovered, and I stood it as long as I could, and finally I found that I wanted to get into Thunder Mountain just the same as anybody else, but I wanted to wait until spring, and go in decently and properly, for there was nothing but trails and no road in there, you could not get anything but a big horse in there anyway in the summertime, and in the winter it was impossible, and the result was that there were a great many mining deals made in Boise, and Boise was the headquarters for mining deals in the Thunder Mountain district in the winter of 1901-02. The next station for the sale of Thunder Mountain properties was Pittsburg, and when a man could not sell his property in Boise, he went on to Pittsburg, and if he had sold it to a Boise man or a dealer who was in Boise, that dealer likely took it to Pittsburg and sold it there; that is where most of the money came from; it was a lode mining proposition and supposed to be immensely rich, and having been in mining excitements and mining countries since '77, I desired to join that rush into the Thunder Mountain district; I had been interested in making some small deals in the Thunder Mountain district in a very small way, and on the side with others I had



(Deposition of John Kinkaid.)

made a little money, but not much out of it; I had seen others make a great deal and had handled some of their money for them and helped them make their deals, and I concluded I would go just as soon as I possibly could, and I waited some little time, I should say something like eight or ten days to complete my own filing, my final proof upon my timber claim which I had filed on, and which was down with the State lands where I supposed I would get \$10.00 per acre for it when I should sell it, if there was ever a sale for it, and I thought I would get at least that; I wanted to keep that as an investment, and I think I entered my claim and made final proof on the 11th day of April, and on the 16th day of April, 1902, I went into Thunder Mountain myself. I had previously sent one party of two men in there at quite an expense, and I told them that I would follow, or come in by another route and likely to get there before they did, and I know that I had settled up and returned to Mr. Sweet and Mr. Stunenberg every dollar that I had ever gotten from them, and dismissed the purchase of timber from my mind in every way before I went into the Thunder Mountain district, and sometime before I proved up on my own claim, and I didn't quit under very friendly circumstances, because I told them I didn't want anything to do with the deal, and they were afraid that I would make something out of it.

Q. What was the date of your departure for Thunder Mountain?

A. The 16th day of April, 1902; I was 22 days on



(Deposition of John Kinkaid.)

the road with a hand sled, on the trail in the snow, and I met about 5,000 other people who were doing the same thing, and I met my own party up there.

Q. Now, up to the time you left for Thunder Mountain, had you purchased a single claim of any entryman or entrywoman in the State of Idaho?

A. I had not.

Q. Had you paid to any entryman or entrywoman any money up to that time?      A. Not one dollar.

Q. Had you returned to Mr. Sweet and Stunenberg any of the money which had been given you for the purpose of buying timber claims if any were to be found?

A. I had returned all of it, and I want to say that those amounts that I returned to Mr. Sweet were likely returned to me, that is, say a particular thousand dollars that he left with me, and I gave it back to him when I told him that I didn't purchase any claims, and he might have given me the same thousand dollars again.

Q. How long did you stay in Thunder Mountain?

A. I stayed there and saw the District; I went there to practice law, that is, I was going to practice law, and buy mining property, and deal in the mining business. I had prepared everything for that purpose, except that I could not get in anything, but I was going up into the District and was going to stay there, and I was going back out and get my stuff, and go back in there; I examined the District very thoroughly, and worked all over it, went all over it on snow shoes, and went over it where it

(Deposition of John Kinkaid.)

was bare, there was a lot of the district that was bare when I was in there, of snow, there was plenty of it, anywhere from ten to fifteen feet of snow and whenever anything had been discovered I examined it, and I examined very thoroughly the Dewey mine or Caswell mine, which had been sold, and Mr. Tom Reed was the superintendent of it there, and he was a very good friend of mine, a very close friend of mine, and he showed me that mine very thoroughly, and told me about the District, and I went very largely upon his judgment of the district, and upon what he gave me an opportunity to see, and while I have been in the mining business, I have always paid out my money on my own judgment, and always have been willing to do it when I have had it; I decided that that district would never made a valuable mining district, and although I made some locations there, both the men I sent in there had made a lot of locations, and were making a lot of locations for me, and although I held those claims for two or three years afterwards, and spent money on them all afterwards, I never believed they were any good, and never tried to sell them, and never did anything with them, and I went out of the District by another route and came back to Boise, and arrived there the first day of June, 1902.

Q. Now, during the time you were in Thunder Mountain, did you have anything to do whatever with the purchase of timber in the Boise Basin or elsewhere in Idaho?

(Deposition of John Kinkaid.)

A. No, you might as well have been in mid-ocean. You could not deal; there was no communication except by foot.

Q. Before you left for Thunder Mountain, state as to whether you learned that Mr. Sweet had sold out?

A. Mr. Sweet had sold out to Mr. Steunenbergh.

Q. Or to Mr. Palmer, or to anybody else?

A. Yes, I had heard that they had made some deal.

Q. Did you know anything about the terms of that deal?

A. No, that was a thing that they would not communicate to me under any circumstances because I was not attorney for them and they thought that I wanted to be in on that deal.

Q. Do you remember of a man by the name of Dennis Thornton reporting to you between the 1st and 10th of April, by letter or message from a man by the name of Palmer?

A. I remember that Mr. Thornton came to see me and he came and asked if I had a plat or a plat-book for him and I told him I had not. Whether he had a letter from Mr. Palmer or who it was I don't know, but it might have been that he had a letter from Mr. Palmer and I don't know whether I knew Mr. Palmer at that time or not, or when it was I don't know. I think he came there and bought some timber, and I think he went up into the Boise Basin and looked at it.

Q. Did Mr. Steunenbergh leave any word with you

(Deposition of John Kinkaid.)

in reference to Mr. Thornton coming?

A. Mr. Steunenberg left a letter there, an envelope, for a man who would call for it and he says, "They will send somebody to call for that letter," or it was a package. My recollection is that it was a little package, an envelope, say, but it was a large letter and I think quite likely had a plat in it. That is a matter of judgment more than a matter of recollection now. It maybe had a tracing map in it.

Q. That was some little time after you had learned that some deal had been made or was pending with eastern people?

A. I inferred it was. I know that when Mr. Thornton came to me and asked me for a map or plat-book or something of that kind, that I didn't know what he wanted or what it was, and I told him that I hadn't anything to do with that matter, and he says, "You must have, there must have been something left here for me," and then I remembered that Mr. Stunenberg had left something there for a man who would call, and Mr. Thornton was a little bit hurt because I didn't know his name, but I had not had it given to me and I had no information. I took the "Idaho World," published up in Idaho City, in which those applications were published and he wanted to know what land was being located up in there, or was located in the Boise Basin, and I gave him some of those newspaper clippings. I think I gave him some of the old ones.

Q. Did Governor Stunenberg live at Boise or Caldwell?

(Deposition of John Kinkaid.)

A. At Caldwell, thirty-five miles below.

Q. And state whether he spent very much time in Boise at that time?

A. I didn't see very much of Mr. Stunenberg. He was a man whom you could not tell when he was coming or going.

Q. Now, I think you have covered the ground very thoroughly up to the time of your going into Thunder Mountain; now, after you returned from Thunder Mountain, June 1st, 1902, did you have any conversation with Mr. Stunenberg about any agreement you had with him in reference to buying titles?

A. Yes, I did.

Q. Just state that.

A. Sometime after I returned, I don't know how many days Governor Stunenberg came to see me because I was really sick. Of course, I was going about in a way, but I was staying in my room. The trip up there had been too much for me, and he came to see me and said to me, "John, you are very hasty about what you said to us about going into the timber deal, and, of course, if you don't put up in these matters you can't expect an interest or anything of that kind in a deal, but I think you understand this business much better than I do, and I wish you would purchase this timber land," and he said, "I have entered into a very binding contract with some eastern people to furnish them a very large amount of timber, and I ought not to have made such a contract, because I was required to guarantee that I would get a large amount of tim-



(Deposition of John Kinkaid.)

ber, and I don't think it is up there."

Q. Do you mean timber or timber land?

A. I mean timber land, and I think that I have heard of his entering into a contract of that kind before, but at that time he told me, he said, "I would like to have you see what you can do for me in buying timber lands in the Basin so that I can make my contract good," and I told him that in the first place I was a lawyer, but was not practicing, and in the next place I was not a real estate man, and didn't want to go into that business; that I hadn't satisfied him and Sweet before when I had tried to purchase land when there was nothing to purchase and I didn't think I wanted anything to do with it, and he didn't say much about it then and went away. Mr. Stunenberg was a man who could always listen well, but always let the other man do the talking, and a man of very few words himself. You would not realize it, but usually the conversation was mostly on one side. And at the first interview I had with him I didn't want anything to do with it, and I was getting ready to go up to Atlanta, a mining district up in another county there, and there was some good property there, and I was going to go into the mining business there and I didn't want anything more to do with the Basin. I had lost lots of money up there. The next time he *was me* he asked me if I had thought better of buying that land for him and finally there was an agreement entered into like this. He said, "Go ahead and see what you can buy some of



(Deposition of John Kinkaid.)

those lands for, and I will pay you for whatever you do," and I said, "Well, what do you think you ought to pay me," and he said he didn't know about that, and "See what trouble it will be and we will agree upon that afterwards." And I don't remember what was said, but finally he came to me one day and brought me some money in currency, and I think it was twenty-five hundred or thirty-five hundred, or something of that kind, and he said, "Now, I want to leave this money with you and I want you to go out and buy some of that land for me," and I kept the money. I don't know whether I deposited it, now or not; that was sometime after the 1st of June, and if I did deposit it, the bank account will show it; the deposit would be early in June and the probabilities are that that is the money.

April 6th, 1909.

At 10 o'clock A. M., met pursuant to adjournment. Counsel for parties being present, whereupon Mr. John Kinkaid proceeded to testify as follows:  
(By Mr. BUNDY.)

Q. Proceed, Mr. Kinkaid.

A. As I remember it, I had come down to the first part of June, 1902, after my return from Thunder Mountain, when Governor Stunenberg came to me and spoke to me about the purchase of the timber lands in Boise Basin tract. At the time that he gave me this money, of course, we discussed the price that he could pay or wanted to pay for it, and I asked him how much he wanted to pay, what he could pay for the property, and he said

(Deposition of John Kinkaid.)

that he had entered into an agreement whereby he had secured parties to purchase any timber lands that might be entered in the Boise Basin, provided he could get enough for a decent timber operation, and provided that the land wouldn't cost in any case to him more than \$5.00 per acre. He said that that was his maximum amount that he could possibly pay, and if he had to pay more he would have to lose whatever he paid. I told him I didn't think that was enough, didn't think he could get the timber land for it, and he said he thought it ought to be bought a good deal cheaper, because scrip was selling cheaper and he understood the lands were selling cheaper elsewhere than that. That there was one thing certain that he couldn't pay any more, and that if he could pay me anything for purchasing the timber I would have to get it for less than that, and he then asked me what I would charge him, and I told him that I never had done any work of that kind and I didn't know what it was really worth, but I thought that it would be impossible to get that stuff at that rate, and he said I would have to get it a good deal cheaper, and we finally agreed after a lot of conversation on the subject that I should get that land, buy it upon my own account for as cheaply as I possibly could, and that he would pay me immediately upon my getting a deed,—he would pay me \$5.00 an acre for it, or \$800.00 a quarter section. And he said that I had better begin as low as I possibly could, because I couldn't ever lower the price afterward, and that

(Deposition of John Kinkaid.)

the probabilities were that the price would go up, and that I would have to pay more instead of less than I would start out. That seemed very reasonable to me, and in fact it proved to be the fact when we went first and—there was a good deal of agitation about the timber in Boise Basin and elsewhere, especially over the State of Oregon, and people were anxious to sell, and it was for that reason, as I understand it, we got the first timber quite cheaply. I was unable physically to go about town, and unwilling to do so, a great deal at that time, and I went to my friend Mr. Pritchard, who was practicing lawyer there at Boise, and was also engaged in the real estate business, or advertised to do real estate business, and he had a partner—I have forgotten his name now—that was in the real estate business, and either had him then or had him later. I think he had him then and I thought perhaps that would be in his line of business, and I asked him if he would endeavor to make some of those purchases, and he said he would, and I asked him what he would charge me, and he said he thought he ought to have a good commission out of it, and he would do what was right with me if it was my personal affair. I told him it was, because if I purchased anything I had to get it within a certain price, and while I might make something on some, I might have to pay a good deal more for others and might make nothing on the others, and I told him to buy as cheaply as he could, and under no circumstances to pay over \$800.00 a quarter section

(Deposition of John Kinkaid.)

for timber lands in Boise Basin. I had a copy of the "Idaho World," a newspaper in which these applications for entries had been published. I think I kept a file of them in my office, and I made up a list of all the entries that were in Boise Basin, or in that country, that had been published in that paper for, oh, six or eight months previous. I just pasted the notices on applications in a small book—blank book—and I think I gave that to Mr. Pritchard, at least I showed it to him, and asked him to see some of those people, and I was surprised to see that there was so very few of them that I knew. I believe that there were more people belonging to the Boise Basin tract whom I did know that had applied for timber up there and secured it, but it turned out most of them were Boise men and women and residing there in Boise. I left with him what money I had and told him to see what he could do for purchasing that way. At that time I did not attach much importance to it, because I didn't suppose that there would be a great deal of that timber that could be bought at that price, but we fixed upon some amount, and he said he would charge me whatever he *would charge me whatever he* would charge any other client. I was inclined to believe that he would favor me. I told him he needn't do that, because I wouldn't handle it a bit longer than I was making something out of it, and there was no definite amount that I had to buy of it, and I wanted to see him make something out of it as well as I did. We agreed upon some amount, however, I think before

(Deposition of John Kinkaid.)

he had done any work. He didn't purchase for some time. I don't know why it was now, but after a time he began to turn in some titles to me. In the first place, Governor Stunenberg wanted me to take the titles to myself, and convey them to the parties or party whom he had secured to buy timber land—with whom he had made his deal, as he called it, and the parties whom he had secured east to furnish the money with which to purchase these properties, and it was also agreed that there should be warranty deeds made, and I didn't think I would take the deeds myself and then made warranty deeds over for all of their lands—while others might sign warranty deeds that way that would be binding that I didn't care about doing it on lands, unless I was making a considerable out of it, and then he told me to take the deeds direct to A. E. Palmer, of Spokane, Washington, and I think I had seen Palmer before that, before I went to Thunder Mountain. I think I had seen Palmer—possibly I had met him. I don't think I had, not positive about that, however, because I did meet Palmer afterward at sometime when he was there and talked to him a very few minutes, and I can't fix the time as to when that was, or what we talked about at the time.

Finally, I think it was about the middle of June, and that's only the impression, the deeds themselves should show when that was, titles—Mr. Pritchard began to get some titles. I had told him to let it be known to some of those entrymen and to all that he



(Deposition of John Kinkaid.)

could that he would buy timber land, but not to run after anybody, or go out of his way to get it. He secured some deeds, exhausted the money which I had placed in his hands, and he got those first titles, and I would say he got a few of them for as low as \$650.00 and then they jumped up to about \$700.00. Governor Stunenberg paid me \$800.00 apiece every time I turned over a deed for a quarter section of land to him. I think some of those first deeds that were given were warranties, and some were quitclaims, and Mr. Pritchard and I discussed the matter and decided that a quitclaim deed would transfer the title as well as a warranty under the law in that State, and that that was sufficient, and some of the parties said they didn't want to give warranty deeds.

I think there was one or two cases of that kind.

Governor Stunenberg, after I had in something like 8, or 10, or 12 deeds, and he had paid me at the rate of \$800.00 each, wanted to know of me what I was paying and I told him that I had been able to get them cheaper than I thought I would, that those had cost me about \$700.00, as a rule, and he said *they* you are making something out of it, and I said "yes"; and after that time he would not pay me any of the money that I paid out, unless I had already gotten a deed for it, and presented it to him. After that I bought every title that was purchased with my own money, took the deed in the name of Mr. Palmer, and turned them over to Governor Steunenberg, and got my money for the deed, as I delivered it, but instead of paying me \$800.00, he paid me



(Deposition of John Kinkaid.)

\$700.00 at each time, and for each title, saying that he would reserve the other amounts and pay it to me all in one time, and that it would amount to something to me then, whereas it wouldn't amount to so much if I used it as I went along. From that time on all payments were made, I think, in multiples of \$700.00 for a long time.

Mr. Pritchard purchased from *time for me*, and I paid him from time to time what he charged for his services; most of the titles that were secured in the Boise Basin tract of timber lands that is involved in this case—that is in that year and some time in the following year in 1902 and 1903, I purchased mainly through Mr. Pritchard as my agent and attorney and real estate man, you might say, something like, it was either 99 or 100 or 101 claims, in Boise Basin, or quarter sections of timber land, taking the title all in Mr. Palmer.

Now, there were some of those titles that I took myself, I purchased myself, but when Governor Steunenberg wanted me to buy the property, I asked him why he didn't buy it himself. He said the price would be run up on him too quickly, and they would know he had made a big deal, and it wouldn't do. I then told him that if I purchased at all and took my chances upon making anything out of the property, that he must keep out of the market, and not make any purchases, and the same rule I made with Mr. Pritchard. I didn't let it be known that I was buying at all, and I told Mr. Pritchard not to say that I was buying, but to say that he was buying—

(Deposition of John Kinkaid.)

that he was buying to take the deeds to Mr. Palmer, so I didn't let it be known that I was buying at all, because that would have run the price up on Mr. Pritchard, which would have been running it up on myself, but there were some parties came to me—I can't remember them now—and I bought their property and paid them for it, various sums and amounts, but always bought outright and always paid in cash in full for every claim that I bought myself individually, or bought through Mr. Pritchard. I was away from Boise a great deal during that time, that is, especially in the latter part of 1902 and in 1903, and so on, and Mr. Pritchard was looked to as the man that was buying timber land in Boise Basin.

That closes up that transaction. That was what Governor Stunenberg had agreed to get for Mr. Palmer, and afterwards I learned that Mr. Barber and Mr. Moon were engaged with Mr. Palmer, or were furnishing him the money, or something of that kind, and afterwards, of course—I don't know when that was—the Barber Lumber Company was organized, and it was a matter of common report in the newspapers and everywhere that it was for the purpose of purchasing and taking over the Basin timber lands, which meant the timber lands which I had secured in the name of Mr. Palmer. Those things I didn't understand at the time fully. Of course, I don't suppose anybody did. I know that I knew about it afterward when it occurred.

Q. Now, Mr. Kinkaid, going back to the time

(Deposition of John Kinkaid.)

when you learned that Mr. Palmer had become interested in some way with Governor Stunenberg, when Mr. Sweet had dropped out of the deal, I asked you as to whether or not at the time you took any part in the agreement, transfer or sale, whatever it was, between Governor Stunenberg and Mr. Palmer?

A. No. I didn't, and I didn't understand that there was any sale of anything, because they had been so exceedingly anxious to get something to sell—to purchase something that they might sell that, and I knew that they hadn't got anything prior to my leaving Thunder Mountain, and Governor Stunenberg told me after I came back, and possibly they told me—either he or Sweet told me—before I went away, that they had secured a man who would purchase the timber when it was ready for purchase.

Q. At or about the time you came back from Thunder Mountain, or at or about the time you made arrangements with Governor Stunenberg to buy this timber, state whether or not you learned that final receipts were or were about to be issued?

A. I don't remember what was said to me about the final receipts being issued after I came back from Thunder Mountain, because when I went away to Thunder Mountain I understood from common report, and it was in the newspapers, I think, too—at least I understood that the general order which had prevailed had been revoked so far as the Boise Basin and the Fayette River was concerned—part of Boise County was concerned—that was it was those two districts are in Boise County, and I sup-

(Deposition of John Kinkaid.)

pose that a great number of those people, or all of those people had the final certificates at that time. Of course, whatever the records show is the fact. It is my belief now, that I took it for granted that those certificates had been issued.

Q. State what, if anything, you told Mr. Pritchard with reference to final receipts in buying land?

A. My strict instructions to Mr. Pritchard was this: to purchase no title except upon the presentation to him, and too, I think at first, to me of the Receiver's receipt and the warranty deed for the same, and I told him before he paid any money at first to show me the receipts, and he showed me the receipts and gave me the receipts with the deeds after that, so that he understood it thoroughly, and complied with it strictly. Mr. Pritchard is a man that I thoroughly, strictly relied upon, and had the utmost confidence in him. In fact, if I have now any money I felt it was much safer in Mr. Pritchard's hands than my own, and I devoted from that time on whatever money I happened to have of my own to the purchase of that property and by me turned over to Governor Stunenberg by deeds—sometimes quite a number.

Q. What, if anything, did you know about John I. Wells having advanced money for the purpose of making final proof to these various entrymen and entrywomen in the Basin?

A. As I said before, from the anxiety of Wells about the entry of his friend Bert Nugent, and the old gentleman, Arthur Anderson, and at the time

(Deposition of John Kinkaid.)

that they made final proof although they told me that they had their money, I became suspicious that Wells would likely advance them the money if he had it, but he told me he had enough to prove up on his own claim, and his wife had her money, but he wasn't going to rob her to help out the Andersons or Nugent, or any of them, that he wouldn't do that. He said he had promised to see them out—to see them out of town, that their bills were paid after they had proved up, and, I think, to this day, that the reason he brought that money to me to give them after they had proved up, in the evening of the day that they proved up, on which they did go home, to pay their bills, was to show me that he was lending to them afterwards. I had no knowledge of his advancing. I never knew until I heard Mr. Wells testify here that he had advanced one dollar to Bert Nugent—that he had advanced anything to Bert Nugent.

Q. My question was with reference to the other Basin entries, generally speaking?

A. I understood in—there was a hearing there upon these same entries at Boise, either in—the records will show when that was, but it must have been in 1903—and there I understood that Wells testified that he had advanced part of the money to Arthur Anderson—that was the first I heard of that, and the only thing I ever heard of it, and I didn't pay much attention to that even then. It didn't worry me at the time, I remember, because it wasn't my business, and I didn't care anything about it, and



(Deposition of John Kinkaid.)

I didn't take it seriously that Wells had any considerable amount of money. I didn't think there was any danger of his lending anybody any great amount of money. I knew he was working in the mines.

Q. What, if anything, do you know at the time you bought these claims of Mr. Sweet having advanced money to the entrymen?

A. I never knew that until long afterwards and that first came out through some of these people.

Q. Mr. Kincaid, you have gone through the beginning of the history of this Basin land. I want to ask you if what were spoken of and what is known as the Basin land were all taken deeds to and were all taken in the name of Palmer?

A. Every deed that I ever took upon the Basin land was direct to Mr. Palmer.

Q. There are certain lands involved in this litigation to which the deed from the entryman was taken in the name of Horace S. Rand. What tract of land were the Rand lands?

A. The Rand lands were the lands out on the Crooked River.

Q. Then certain other lands involved in this litigation, the deeds were taken in the name of George S. Long. What tract of land was embraced in those deeds?

A. That was known as the 6-4.

Q. Which in chronological order was bought next after the Basin lands?

A. The Crooked River must have been.

Q. State your first connection with the Crooked River lands.



(Deposition of John Kinkaid.)

A. I want to state that these deals in time overlapped one another—that is, the time of taking those titles they overlapped one another more or less, as your deed will show.

Well, all I remember about it is I knew there were a great number of people going from Boise, and most excellent people, too—well to do citizens, who resided there in Boise,—I knew that they were going to Crooked River, and making filings on timber lands out there at Kempfer's ranch, and I think that Kempfer and his sister in law and his wife filed upon lands near their ranch themselves—in fact. I know they did. I know that I bought their land afterward.

Q. State what, if anything, you had to do in inducing or procuring or requesting people to file on lands in the Crooked River tract?

A. Nothing whatever. It was no concern of mine, or interest of mine in the least bit. It had nothing whatever to do with the Boise Basin, because it was within a different water-shed, wasn't near Boise Basin at all, had nothing to do with Palmer, Stunenberg, or any of those parties whatever so far as I ever heard of it, until about February, 1903, when the first titles were procured, and in the name of Rand.

Q. Now, before that, state what, if any, arrangement you had made with Governor Stunenberg with reference to the Crooked River titles.

A. I had no arrangement with anybody. I didn't want to go into the business at all, or have anything to do with the tract. I had lost money upon the

(Deposition of John Kinkaid.)

Basin tract, because Governor Stunenberg had never paid me the balance that he owed me upon the Basin, and told me that he hadn't gotten settled with Palmer or with Palmer's backers, meaning Barber and Moon, and I didn't care to go into anything more of the kind which would cost me—instead of making anything out of the Boise Basin, I was in several thousand dollars before I got through, and I put that money in hoping to get the balance that was coming to me.

Q. State as to whether or not that was ever paid you.

A. No. That was never paid me. Governor Stunenberg was assassinated before that was paid me, and he told me that he hadn't gotten settled for it, and he was very kind about it, and he said, "Why, John, if you get that money all at once it will do you some good, and if you get it by piecemeal, it won't amount to anything after all. and when I see Mr. Barber and have made good my contract with him, then I will get paid up what the balance that they owe me, and I will pay you," and that was in that condition up to the moment of Governor Stunenberg was assassinated and while it doesn't seem like a business proposition and wasn't a business proposition to leave it that way, that's the way that I have always dealt with men I believed in, and I believed in Governor Stunenberg as thoroughly as anybody I ever knew, and I am confident that if he had lived that that amount would have been paid to the last farthing.

(Deposition of John Kinkaid.)

Q. Did you afterwards have to file a claim against his estate for that amount?

A. I didn't file a claim against his estate for that amount.

Q. Did you settle with the estate?

A. I settled with the estate, with his brother, A. K. Stunenberg, and as that settlement involves every transaction that I had with Governor Stunenberg, except a matter on the 6-4, and perhaps you had better leave that until you come to it and put it altogether as one proposition.

Q. State your connection with the Crooked River tract so-called, in your own way, Mr. Kinkaid?

A. Of course, it has been a long time since then, and matters that were trivial then have been magnified to be of importance since, and I may not remember the things so well. I remember this; that about the first of the year of 1903, some of those people were trying to sell timber lands up in the Crooked River tract, and there had been a lot of agitation out in Oregon and elsewhere about timber lands, that it was illegal to have timber lands or do anything with timber lands, and people had no sooner gotten their lands until some of them wanted to sell, and I understood that those people were wanting to sell, and some of them came to me. I likely have prepared the filing papers for quite a number of those people. I don't remember how many, or anything of that kind, but, as the thing had gone along, some of them had come to me. I used to charge them \$2.50 for preparing their filing papers; some of them paid

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(Deposition of John Kinkaid.)

me \$2.50, and some paid me \$5.00. They were always more liberal when they were filing than they were when they were selling out, as far as I could see, and some of them told me that they would like to find a purchaser, and I presume some one knew that I had purchased some of the timber up in Boise Basin, quite likely they did, and had at least heard it because it was known at that time that I had, and I told them that I couldn't do it. Didn't know of any person that I could sell to, and long about the first part of February, Governor Stunenberg came to me and wanted to know what there was in that tract. I told him I didn't know. I wasn't there, never had been there, and he said that they hadn't got enough lands in Boise Basin, and while it wasn't in his contract in any way to furnish any lands outside, because he hadn't furnished enough in the Basin for a big operation at Boise to put in a great mill there, that he would like to take something to his people, meaning the Barber people, that would help out their deal, and I told him that I didn't know anything about the timber land there. I had been up past Kempfer's, but I never had been into that timber, and it was then winter and that country was then impassable, unless upon snow shoes, and I don't know but what he sent somebody in there. If he did, it was a man by the name of Taylor, I think. I remember that either then or some time afterward Taylor was up in there and then a messenger was sent in there to get him out of there because his brother was dying. I think that was Taylor. And the



(Deposition of John Kinkaid.)

question arose as to what those people wanted for their lands, and they wanted \$1,000—\$1,500.00, various amounts, and those locations out there ran very largely in families, as I remember the first ones I purchased. Now, there was a family by the name of Omby. They were people who owned the Boise Basin Toll road, I afterwards learned, seven or eight of them, male and female, and then there was a family—an old family of Boise of Bayhouse—old time residents, been there since the beginning of the town, and there must have been a half dozen to ten of the Bayhouses, brothers and sisters, etc., and their wives. And then the Eaglesons. The Eaglesons were quite well to do people, the same as the Bayhouses and the Ombys, and must have been over—there was more than a dozen of the Eaglesons, may not have been under the name of the Eaglesons, but they were ladies who were born Eaglesons and married others, etc. I think there was at least a dozen of them; Governor Stunenberg wanted me to see what I could purchase that property for, and I told him I would have nothing to do with it, and he said he didn't want me to on the same basis; it was an entirely different transaction, hadn't anything to do with the other men—maybe the same parties would get it and maybe they wouldn't. The fact is, I felt the Barber Lumber Company, or whoever it was that the Palmer titles were taken for, had treated Governor Stunenberg quite shabbily, or at least that I had suffered because they had done so in not paying the balance that was due me on the titles

(Deposition of John Kinkaid.)

that I had purchased for them. And I tried to find for those people who asked me to find a purchaser for the property, I tried to find some other purchaser, and I tried to sell to the Fayette people, but they didn't want anything to do with it. The Fayette Lumber Company tried to sell the claims, and the locators on Crooked River had asked me to secure a purchaser for their land, and there was a gentleman came there from Michigan by the name of Baker, and he was a friend of Mr. Dockery's, and Dockery came and tried to arrange to take options upon some of the property, but these people wanted to sell and wanted the case, and they wouldn't sell unless they could sell for cash, and prices were pretty high, and I endeavored to find somebody that they could sell to, and thinking that I might make something by negotiating and making a sale of their property. My sympathies were entirely with the owners of the property. I wanted to see them get the most out of the property that I possibly could. I felt the property was worth a good deal more than the Barber Lumber Company and Mr. Palmer had been paying for it there, but the up-shot of the whole thing was that there wasn't any other purchaser that had money to pay there, except Governor Stunenberg who had the money with which the titles—or could get the money with which the titles were taken to Mr. Rand. Mr. De Arcy was endeavoring to buy the property, or a lot of those claims, and the parties thought they could sell to him, but he wanted to take options, and there were others who were endeavoring

(Deposition of John Kinkaid.)

to purchase, but they didn't want to purchase on time. And about the 11th day of—either the 10th or 11th day, or 9th, or some place along there—of February, Governor Stunenberg said that he would pay me \$800.00 down for all the titles that I would purchase out there on Crooked River, and that I could make as much out of that as I liked in getting the titles for less than that, and I told him I wouldn't try it at all, wouldn't have anything to do with it, that it wasn't enough, and I knew the parties wouldn't take it, and I wouldn't offer them any less than that amount, and I think that he had purchased before that—I say before that, just a few days before—that he had purchased himself from Aaron Omby, one of the Omby family, his entry, and paid him \$800.00 for it, and taken a deed to himself,—that is Governor Stunenberg, and I told him I thought he had better go and buy the rest of the property at that rate, as that was much cheaper than I could do. I think likely that he had tried to do that either directly or indirectly, through some one else, and he afterwards came to me about the 10th or 11th, and said I will give you \$950.00 for every title you get in the Crooked River tract, but you got to get me as many as 50 titles, is my recollection, before I will make you any payment out of which you can make any money. He said, I think, you can get a lot of those titles for \$800.00, and if you do, you can make \$150.00, in each case. He said, I will pay you as you give me the deeds, \$800 for each deed you give me, but I won't advance one cent. I told him I

(Deposition of John Kinkaid.)

didn't care about his advancing anything whatever, that I could get what money I needed to buy all the titles I wanted, and if he took them that he would have to pay for them. It was agreed, therefore, that he would pay me \$800.00 when he got the deed, and when they should have as many as 50 claims that he would pay me the balance of the \$950.00 for the claims. I immediately gave notice, and I presume it was about the 11th day of February, 1903, that I would buy timber land upon the Crooked River, and I offered \$800.00 to the parties to offer their tracts. The first parties that came was some of the Eaglesons, I think. It was either the first or second day that they came, and the Bayhouses, and I paid \$800.-00 for every one of those titles that I secured. I must have taken—whatever the records show—20 or 30 or more of those claims in two or three or four days, the first two or three days. I think it was the first two days, and I prepared all of the deeds. Those deeds will be found upon my own blank forms which I had published, warranty deeds, found in my handwriting. I prepared them in my office, directly opposite the Idaho Hotel, on Main Street, in Boise, and paid in almost every instance in checks upon my account in the First National Bank of Boise, and my account will show there a great number of \$800.00 checks, and those are all for timber claims bought at that time in that tract. The Eaglesons were acting almost as a family it seemed. I think that Harry Eagleson made me promise him that I would take all of a certain number of tracts, ten or twelve or what-

(Deposition of John Kinkaid.)

ever it was that they had, or that I wouldn't take none. They wouldn't give me a deed if they wouldn't sell all at one time, and I agreed to do that and to pay for them. Of course, as soon as I begun to buy I phoned to Governor Stunenberg that I was buying and to make my account good for a certain number of deeds, and I sent those deeds to him by messenger, I think, and my account was made good from time to time as I sent the deeds to him. After the first two or three days, Governor Stunenberg wasn't in town, and, I think, Senator Borah was intrusted with the direction of the funds that Stunenberg had for that purpose. When I phoned Mr. Borah that I had given the deeds, he deposited \$800.00 for each individual quarter section that I told him that I had purchased, and I carried the deed to him or sent it to him. In like manner, that lasted for some time. I bought the bulk of those claims in February and March. I suppose, 1903, and closed that entire transaction up to about 94 claims, I think 93 claims.

Q. Well then, did Governor Stunenberg afterwards pay you the \$150.00 from time to time held back?

A. The first that he paid me was some time, I think, in April or May, 1903. He had then—I am not positive—it was 50 claims; or had the 50 claims to be able to say to his people that he was getting considerable there and would have enough to make a timber operation on the Crooked River, and he said he would pay me the commission then, and he



(Deposition of John Kinkaid.)

paid me \$4,000.00 the first amount he paid me, and you will find a lot of checks with the stubs or the checks themselves may have been marked "Com.," which meant commission. It wasn't necessarily commission, or anything of that kind, but that is the way he had of designating that fund out of which he drew. He held the other funds which he called the "Timber fund" that account seemed to be in the Stunenberg Bank at Caldwell, and the plain account was what were Crooked River—something of that kind—but the other was called "Commission Account" that was where he held the money back he collected. He told me he had collected, and I told him I wouldn't go into the field unless he would collect every time from the Barber people, or whoever he was purchasing for. I told him I wouldn't take their word for it that they would pay him afterward, but that he had to have it in his possession. I think it was carried in the bank as really one account, but had that different designation on his check. The account will show that. I was paid for some 93 titles on Crooked River, first the sum of \$800.00 for each, and afterwards in checks that were marked "Commission" "Com." I was paid the \$150.00 for each claim. In purchasing the claims I don't think I ever gave any checks out for more than \$800.00. Some of the claims cost me more than that, but I think that I made out the checks for \$800.00 and gave them cash in addition to that.

Q. What was the object of that?

A. Well, I don't know that there was any object



(Deposition of John Kinkaid.)

in it, except that I wanted them all to believe that I was paying the same, and I didn't want any evidence out. I have an idea that was it. I don't remember that. There were some of those parties that I paid a little more than that, and there was some of those parties too at first after I had given them their checks came and gave me \$25.00 for making the sale. They felt that I had done them a favor and that I had acted for them. Now, I can't remember what parties that was. That did occur in a few instances in which they gave me \$25.00 for making this sale. Of course, where I bought from a man's wife, I frequently gave one check for \$1600.00, I think for the two claims. One of those claims I bought I turned in a deed, I never got it listed, but I guess that makes no difference in this transaction. That was Mrs. Schmelzel. I never had that on my books and somehow or other it was never figured in and I guess I lost my \$800.00 in that case quite likely, and I never got my \$150.00 from that—never got anything from that, but that would make 94.

Q. Did you have anything to do with procuring or inducing people you bought of to locate in the Crooked River country?

A. Oh, no. I had nothing whatever to do with that. The fact of it was at that time a great many people were trying to find timber land, and I know there were ladies and gentlemen came to me long after that, while that tract was being located, and asked me if I knew where there was anything that I could get, and I might have referred some of those

(Deposition of John Kinkaid.)

parties to the Crooked River tract. When Downs was locating people up there, because I had heard about it and knew about it, some of the people came to me to prepare their filing papers, but that was all I ever had to do with their location, or interested in it.

Q. Did you have any interest, any financial interest in it at all other than you have stated?

A. None whatever, and I want to say for Mr. Pritchard that he had nothing whatever to do in the purchase of those titles on Crooked River, and nothing to do with it, unless he took a lot of those acknowledgments, and I know that when I was taking a lot of those titles, the first few days, I sent across the street to his office, or phoned across to him, and had him come over several different times, and had him take the acknowledgments. I could have gotten the acknowledgments taken down stairs in the same building by Mayor John Haynes, who was a Notary Public, but I learned then or afterwards, that Haynes would never charge anything for taking acknowledgments, and I thought it was an imposition upon him to send people there, although I did it at different times when I couldn't find any other notary near, so the people likely went across the street at my direction to Mr. Pritchard's office and acknowledged the deeds there. Some of them went out and had them acknowledged different places, and when they brought back the deed I gave them the check for the amount.

Q. Were you interested in any manner, finan-

(Deposition of John Kinkaid.)

cially or otherwise, in the location business of Wells and Downs in the Crooked River country?

A. None whatever, and I didn't know that Wells, until I heard Wells testify here, had anything to do with the Crooked River locations, and he was supposed to be in the real estate business there in Boise, and so far as I knew he wasn't taking people up there. I didn't never see him on the road going up there. I used to be up on the road back and forward part of the way. I never saw Wells up there. Evidently Downs was the active man. I had no interest with either of them, and I didn't pay much attention to what either of them was doing, and I don't know that Wells was really a timber cruiser. He might have known how to find corners and shown them to people. I don't think he was active in doing that. I don't know if he had anything to do with the locations or filings in the Crooked River tract.

Q. Now, did the purchase of the 93 or 94 titles you have told us about, conclude your connection with the Crooked River country, the Crooked River lands?

A. It did, and it was a cleaned-up transaction. I had my accounts of every transaction in connection with it until they were destroyed at Rawhide, Nevada, in the general fire there September 4th, 1908.

Q. Now, Mr. Kinkaid, the next transaction involved in this litigation was the purchase of what is known as the 6-4 lands. Now, will you state your

(Deposition of John Kinkaid.)

first connection and your entire connection in the 6-4 lands in your own way, and the same as you have before.

A. The 6-4, I don't know when that was located, in 1903. Now all I know about that transaction was that it was thrown open some time in the summer, and it was advertised as thrown open in the paper, and then it was afterwards stated that the State had a preference right for selection of the school lands, or of State lands anyway, upon this 6-4, for sixty days after it was thrown open for settlement, and I understood that the State had cruisers in there, that was a matter of general information in the papers, and that the State would likely get all of that and would likely take all of it. The administration at that time was a Republican administration, and I didn't belong to that political party, and I wasn't very well acquainted with the State-house party, the officials of State at that time. I knew Governor Morrelson and I knew perhaps the Auditor, the Attorney, and so on, and Eli Moore, and I wasn't interested in the matter in any way, except in a general sympathy or desire on my part that as many of the Boise Basin people, people who lived in Boise County, should get land up there as possible, and as I had represented those people up there in Boise County in the Legislature, and they had been very kind to me and very generous in every way. I always felt even while I was staying most of the time in Boise that that was my home up there, those people came nearer being my people than any

(Deposition of John Kinkaid.)

people in Idaho, and—quite a number of people had come to me from the Boise Basin, and asked me if there wasn't some timber left in the Boise Basin that they could get, and I told them about the 6-4, and told them when it would be opened, and I took some interest in it on that account, and I told them to watch that and when there was a chance to locate there to get in and locate when it was thrown open, and they should have that land if anybody should and to do it. Now, just before—I should say about a week before—the time that the State actually made its selections, or the State actually—that the others could make their filings after the State had made its selections—about a week before that line-up, Mr. Downs, Pat Downs, came to me and said, “I want you to look into this matter of what filings are being made by the State in 6-4,” what selections, and I asked him if the selections had not all been made, and he said no, they hadn't been filed yet in the Land Office, and he said, “I want you to do that for me and do it quickly,” and I told him that I wasn't practicing before the Land Office at that time and didn't care to have anything to do with it, and he said, “You do it and do it for me,” and I think he left a twenty dollar gold piece on the table, and “You find out what they selected.” I went to him then afterward and talked with him about it. He gave me a plat and he gave me an estimate of what he thought as nearly as he could tell, what the State had selected, or would select. He had seen the cruisers of the State, he told me, of the State up



(Deposition of John Kinkaid.)

there, and he had gotten some information from them, or had inferred something from their actions and from the ground they had seen them on, and from the markings on the trees, etc., and he gave me a plat, plank plat, of the township, and marked on it what he thought they were going to take. He was an expert cruiser, and seemed to understand that business very thoroughly. And I went to the Land Office to find out what filings, selections the State had made, and the officers there, the Register and Receiver, told me that the State hadn't taken any yet, and I had learned, and I think it was by some remark that Governor Stunenberg had dropped, that both Stunenberg and the Fayette Lumber Company were endeavoring to scrip that land, and they had some scrip to file on it so I understood, and I was quite positive that Stunenberg wanted to file some scrip on it, and I believed that the Fayette Lumber Company was preparing to do the same thing. I might have been mistaken about that, but I believed it was, and I was interested to the extent of hoping that some of those people in the Boise Basin, who really had stood by and seen nearly all of the timber in the Boise Basin taken away from them by residents of Boise in the immediate locality, I was anxious that they might get some of that ground, and I didn't want Stunenberg or anybody else to scrip it, because scripping always meant to me by a big corporation they would take everything there was in sight. I understand that Downes testified that I got him that information, and that I know



(Deposition of John Kinkaid.)

at the Borah trial it seemed to be a very mysterious thing how that thing occurred. My recollection is I went to the Land Office first to talk to the officers there about it. I went over to the State house and called upon the Governor, and I don't remember whether I saw him at that time, or not. I likely saw his Secretary, and asked him about the States' selections, and of course the right place to go was into the State Land Office, I had first gone to the United States Land Office, of course, and I went into the State Land Office, and saw the officers and clerks there. Now, I don't know who the—I think the active head of the State Land Board was Mr. Norman Jackson, at that time, because I knew that he was in that position from newspapers, but I don't remember that I ever knew Mr. Norman Jackson, and I don't know that I met him there at that time, or who it was that I met. I asked about the selections there and the clerks or the officer in charge there, or some one, showed me some of the titles and plat books, and I noted upon the plat which I had with me what I learned about it, but it is my recollection that it wasn't a definitely settled proposition, that it wasn't certain whether they would take these particular lands or not, but whatever I got there I gave the results to Mr. Downes. I don't know who I got that from. There was nothing mysterious about it. There was nothing adroit or shrewd in any way, and I don't know what officer it was. It wasn't a matter I attached a great deal of importance to at the time, although I was interested for

(Deposition of John Kinkaid.)

those people up in Boise Basin, hoping that they would get some of those locations even rather than the State.

Q. After you had furnished this information to Mr. Downes, state what, if any, arrangements you made with him or what he said he was going to do with reference to locating.

A. Downes said—I told him I didn't know whether that was definite, whether that was right or not. He said he would go upon that, and he said, "Now here, you will have to file these people for me, or it won't be done right,—that is you will have to make out their filing papers, and I know that you can do it out right and do it quickly, and I will send a lot of them to sign so then they won't conflict with each other, so they can make their filings," and I didn't see anything more of him for a week or more, and about, I think it was Saturday—quite a number of those people came into my office with notes from Downes showing that they had been located upon such and such quarter sections in 6-4, and that the timber amounted to about so much per acre, and they asked me to prepare their filing papers. It was a rule of the Land Office that each applicant had to go to the Land Office and get the blanks himself, which he used, and the first time I ever saw those people in that connection, as I remember it, was when they came into my office with their blanks and with this note, and I made out the papers. I made out there—whatever the record shows—something like 20 sets of papers, I think. Might have

(Deposition of John Kinkaid.)

been a little bit more or a little bit less. I made them out on the typewriter, because they were duplicate instruments in the case, and as I checked them over to see that they were correct, as Downes had told me to be very careful about that, told me he would pay me well for it whether they paid me for it or not, I lined the blanks, and since then I have learned that that was a great offense at the Borah trial, but I could identify from the lines and from the typewriting any of those papers that I made out at that time, and I made out something like 20, more or less, and gave them to the parties, and they were supposed to file Monday morning.

I had previously seen the Register and Receiver of the United States Land Office, or the Register at least, respecting the attitude of the office upon the question of giving preference to scrip or individual filings should they present themselves in line, and what I asked Mr. Harry Simms, who was then Register of the Land Office, was whether if a man got in line in that application or in the location of 6-4, or any other township, and presented scrip for filing, whether he would be allowed to file but one piece of scrip or upon one piece of land 160 acres say, and then have to give way to the next man to him, or whether if he had gotten wind of it first, he would stand there and hold the window until he had filed all of his scrip, and Mr. Simms' idea was that he wouldn't hold his place, not only that he wouldn't be allowed to file his scrip, but that he oughtn't to be allowed to file until the individual filers had gotten

(Deposition of John Kinkaid.)

the opportunity. He said he didn't know what they would rule about that, but said that was the way it struck him, and that was his idea, and it struck me as very sensible, but I didn't think it was quite legal, and I told some of the parties who had asked me about lining up there, I told them to get there early in the morning, and it seemed, however, that Sunday evening after dark or about dark, it was discovered that one George Chapman was standing over there an elderly gentleman, an old citizen of Boise, a very nice fellow, and he was standing at the window, which was closed, or at the door, which was closed at the Land Office and they thought he was likely to file scrip and the Fayette Lumber Company had its office in the same building, and the idea was that they were going to file scrip, and I looked forward to some of the Barber people to file the scrip. And when they asked me about it, the same men whose papers I had prepared, quite naturally came to me, I suppose and most of those were Boise men and not Basin men, men I didn't know many of them at the time, when they asked me about it I told them I thought they had better get in line and be as early as anybody, and see that nobody got ahead of them if they could help it. They got in line there and there were a lot of locators there that were from elsewhere. There was a place called Dry Buck where a small timber tract was being taken up—that's on that same day, as I recollect it. That is over, I think, on the other side of the Fayette River. That swelled the number

(Deposition of John Kinkaid.)

that was in line there, and Mr. Peter Sonle, who owned the building, was appealed to by the representative as I understood it, Mr. Frank Somebody, representative of the Fayette Lumber Company, to put these men out of the building, and I think some of those people likely sent for me, and I went over there—somebody sent for me. The Mayor was there, that was Mr. Jos. H. Hawley, the Attorney, who was Mayor at that time, and he was appealed to to put those men out of there as a mob, because he was a Mayor. They appealed to the police force first, of course, and Sonle I believe ordered the men out of there, and they still held their positions. There was no disturbance or anything of that kind. They said they had come to the Land Office to file on lands and they had a right to be there and would be there and stayed until Monday morning until that door opened, and I think it was Mr. Hawley said that as long as they were peaceably, quietly sitting there, they had a perfect right to be there. They had gotten chairs some place and were sitting along very comfortably, quietly.

Q. Now, at that time, or up to that time, Mr. Kinkaid, had you entered into any kind of an arrangement of any kind or character with anybody for the purchase of the lands which might be entered by these locators in line?

A. None whatever.

Q. Did you have any connection with it other than that of being employed by Mr. Downes in making out the paper *as states*?



(Deposition of John Kinkaid.)

A. No. Downes paid me. Many of those parties paid me for preparing their papers. I took what they offered, because I didn't have much time to talk about it, prepared those papers all likely in one afternoon. I think all one day or about that time. They might have been back there earlier in the week, but they didn't get around there until late in the week to have the papers prepared. I prepared the papers as presented to me and Downes paid me \$50.00 afterwards for preparing those papers. I had that interest in it, of course. I had this interest in it. I wanted to see all those that were in the Basin there—there were some Basin men that made filings there, but I don't think they were in that line-up now. There was Joe Penrod, and man they called Riley Reeves, man who used to be treasurer of the county; Penrod used to be Clerk, and there was either Mr. Fisher or Mrs. Fisher—Mr. Fisher was then County Attorney, or had been County Attorney, of Boise County, and the Basin is in Boise County, and they were the only ones that really lived up in Boise Basin, they and two or three others, I remember, were the only ones that lived in the Basin who made a filing, and whether they filed in that line-up I don't know whether they did then or the next day afterwards, and as to whether Downes made their filings for them, that is showed them the land, located them, or that, I don't know. I haven't the least idea. I don't think I made—

Q. Did you afterwards purchase the lands which were located in 6-4 from some of them?



(Deposition of John Kinkaid.)

A. Yes. I either purchased those lands or sold those lands, as you may call it, and I don't know which it is.

Q. Just state the arrangements you made.

A. You can call it which you please. I either purchased them or sold them, and it was my hope that those lands wouldn't go to the Barber Lumber Company, or any of those parties, and it was my belief from the spirit of rivalry that those men showed in lining up there and fighting for their land, staying there all night, that they would be locators that would hold their land, that they would keep their land there until the land would be worth something to them, that they would make some money out of it, and I had very great hopes of—that they would do so, not that it was any of my business, but I wanted to see them do it, and after they had proved up and paid for their land. Some of them talked to me about the thing, and I advised them now—you take parties who came to me and talked to me about that thing to hold their land there and hold it until it was worth a great deal more than the Barber Lumber Company, or anybody else had ever paid for it up there, and the most of them I talked to believed that they would do it, but they said, what's the use after a time, if I hold my piece of land other people will sell theirs. I will be surrounded and they won't have to buy mine until they get good and ready and I can't hold out for years, and I heard soon after and it was a surprise to me too, soon after they had proved up that there was some

(Deposition of John Kinkaid.)

of those people that wanted to sell—some of them came to me and asked if I could find a purchaser and I told them I didn't think I could and didn't believe that it was time to sell anyhow, and I am free to say that it wasn't at all philanthropical on my part that they should get more out of it, that I supposed if they would hold that land until they would get more out of it, if I ever assisted them afterwards I would get more out of it for assisting them if they should come to me. I thought I could make more later than I did then. I didn't want to sell any more lands to the Barber Lumber Company; didn't want to have anything to do with it, because all the amount I should have made on the Boise Basin tract I had never realized that, or gotten it paid. All that I had gotten, or practically all that I had gotten out of the Crooked River tract in the way of commissions or otherwise, had gone back into timber, or gone back into Stunenberg's hands, practically all, and I didn't want to have anything more to do with Stunenberg, or his deals. That was the way I felt at the time and I knew, however, that they would want that land. They had been defeated from filing the scrip on it and I didn't believe they would pay any great amount for it, but subsequent to that time Mr. Borah came to me and said that they had had money sent to him from Eau Claire with which to buy timber lands in the Boise Basin, and that he understood that there was lands up in 6-4 that were subject to sale, and that the parties wanted to sell, and I asked him what he would

(Deposition of John Kinkaid.)

pay and he said he would pay—didn't make any difference to him, that he would pay whatever the land cost, if it didn't go too high, and that he would pay me for my services. Stunenberg also came to me, but I don't know whether it was Stunenberg came to me first or Mr. Borah. It was one or the other. I had had no transactions with Mr. Borah before, except that he had deposited some money for me upon the Crooked River tract when I was purchasing that. And I likely consented more readily to do it for Mr. Borah than I did for Governor Stunenberg for that reason, and he seemed to be very liberal about what he would pay, and he told me he would pay \$50.00 a piece for getting certain titles if I would keep them down to \$800 or something like that, and those he had mentioned to me that they wanted to sell, some of them *I was them* and I purchased— Oh, I purchased something over 20, and I think it was 27 of those claims in 6-4, and took the deeds to George S. Long, at the direction of Governor Stunenberg or Mr. Borah, whichever it was that first spoke to me about it. I bought those at about \$800.00 apiece. Paid my own money for them in each instance and took the deed to Mr. Borah, or to Mr. Stunenberg, or the deeds, sometimes I took several, and the money was paid me, \$50.00 a claim that Mr. Borah paid, and I think Governor Stunenberg paid the same. Whatever was paid was paid out right at that time upon each deed that was delivered, and the full amount that I had paid—I told them I had paid was repaid to me.

(Deposition of John Kinkaid.)

There was one case—that was of Riley Reeves I paid him \$1,000 for his claim, but I got the \$1,000 of Mr. Borah first for that. I remember that, but all the others I bought with my own money, and presented them and got the money afterwards.

Q. Did you buy any of these claims from any of these entrymen from 6-4 before final proof had been made and final receipt?           A. No, sir.

Q. Did you negotiate with any of them in regard to it?

A. No. I never did that with any one, and there was no one of those men that would have made such a proposition to me.

Q. Was the same true with the Crooked River tract?

A. The same was absolutely true of the Crooked River and every other claim in the Basin or elsewhere, or *time* or stone entry that I ever knew of.

Q. Did you ever in any of the three transactions you have detailed purchase anything, any claim, from any entryman or entrywoman prior to the issuance of the final receipt and certificate by the United States Land Office?

A. No, sir. Nothing of that kind was ever mentioned or discussed between me with any one that I believe ever filed upon the claims in Boise Basin or in Fayette, or elsewhere, in that country. There were such propositions made sometimes by irresponsible people, or people who convinced me that they were very irresponsible that came and asked me if they could not get money for the purpose of filing

(Deposition of John Kinkaid.)

upon timber lands, and I told them that I understood that that had been charged to be the case out in Oregon, and I didn't know of anything of the kind in Idaho, or elsewhere, and they had better dismiss the matter from their minds.

Adjourned until 2 P. M., the 6th day of April, 1909.

At 2 o'clock P. M., met pursuant to adjournment.

**[Deposition of John I. Wells, Recalled on Behalf of Defendants.]**

Counsel for parties being present, whereupon Mr. JOHN I. WELLS, being recalled for further cross-examination, testified as follows:

Cross-examination.

(By Mr. GORDON.)

Q. Mr. Wells, I show you a timber and stone sworn statement of John I. Wells, dated September 20th, 1901, and ask you if you signed that paper filed in the Land Office at Boise, on or about that date?

A. Yes, sir; I did.

Q. I show you the testimony of John I. Wells given on final proof December 12, 1901, and ask you if you filed that in the Land Office?

A. Oh, yes.

Q. And the cross-examination attached is not signed. I show you a deed dated October 8, 1906, made by John I. Wells and Jennie E. Wells, his wife, to the Barber Lumber Company, consideration \$800.00, and I will ask you if you signed that deed and whether that is your wife's signature, and



(Deposition of John I. Wells.)

whether you both acknowledged the same before John J. Blake?        A. Yes, sir.

Q. That deed has never been recorded?

A. I don't know.

Q. When did you give that to the Barber Lumber Company?

A. Well, I could not give the exact date; I think it was about four years ago, I guess.

Q. Who prepared that deed for you, Mr. Wells?

A. I think Josh Blake.

Mr. GORDON.—We offer in evidence the timber and stone sworn statement of John I. Wells, dated September 20, 1901, the testimony of John I. Wells given on final proof, dated December 12, 1901, and cross-examination attached, receiver's receipt and the register's certificate, dated June 22, 1904, the other final proof papers and the deed dated October 8, 1906, made by John I. Wells and Jennie E. Wells, his wife, to Barber Lumber Company, consideration eight hundred dollars, all of which papers have been identified by the said John I. Wells as having been signed by himself, and the deed also having been signed by himself and Jennie E. Wells, his wife; all of said papers having reference to the northwest quarter of Section 14, Township 7 N. of Range 5 E., Boise Meridian, which papers are marked "Complainant's Exhibit John I. Wells No. 2."

Mr. BUNDY.—I object to the introduction of the entry papers by John I. Wells for the reason that his claim was not involved in this action and not initial to it.



(Deposition of John I. Wells.)

Q. Mr. Wells, do you know Harvey H. Wells?

A. Yes, sir.

Q. Is he a brother of yours? A. Yes, sir.

Q. Mr. Wells, do you know the signature of Harvey H. Wells? A. Yes, sir; I think I do.

Q. You have seen him write, haven't you?

A. Yes, sir.

Q. I will show you an affidavit dated December 10, 1901, signed by Harvey H. Wells, and I will ask you whether that was signed by Harvey H. Wells?

A. I think so; yes, sir.

Q. I show you the testimony of Harvey H. Wells given on final proof, dated December 10, 1901, and ask you if that is the signature of Harvey H. Wells?

A. Yes, sir.

Mr. GORDON.—We offer in evidence the affidavit of Harvey H. Wells, identified by the witness as having been signed by said Harvey H. Wells, and I desire to read the same now in the record.

Mr. BUNDY.—Objected to as incompetent, irrelevant and immaterial, and for the further reason that no land entered by Harvey H. Wells is involved in this action, and the defendants are not charged with having acquired any land through Harvey H. Wells.

(Mr. GORDON reading:) "Department of the Interior, United States Land Office, Boise, Idaho, December 10th, 1901. Harvey H. Wells, being first duly sworn, deposes and says, that he is the identical Harvey H. Wells who made a timber and stone sworn statement No. 224, at this office, on September 24th,

(Deposition of John I. Wells.)

1901, for the Southwest quarter of Section fourteen, township seven North of Range Five East, on which final proof was desired and made December 5th, 1901; that he was unable to appear and offer proof on that date, or any any subsequent days, until this 10th day of December, 1901, for the reason that the money with which he expected to pay for this land, was not at hand, and could not be got in before to-day. (Signed) Harvey H. Wells." "Subscribed and sworn to before me this 10th day of December, 1901, Edward E. Garrett, Receiver."

Said paper is marked "Complainant's Exhibit Harvey H. Wells, No. 1."

I also offer in evidence the testimony of Harvey H. Wells given on final proof, and cross-examination thereon, which has been identified by John I. Wells, marked "Complainant's Exhibit Harvey H. Wells, No. 2."

Mr. BUNDY.—Same objection as above, and for the further reason that it is not proper cross-examination.

Q. (Mr. GORDON—Continuing.) I show you a non-mineral affidavit of Harvey H. Wells, dated December 22d, 1901, and ask you if that is the signature of Harvey H. Wells? A. Yes, sir.

Mr. GORDON.—We offer this paper in evidence marked "Complainant's Exhibit, Harvey H. Wells, No. 3"

Mr. BUNDY.—Same objection as above.

Q. (By Mr. GORDON.) Mr. Wells, do you know Edward Abel Hunter? A. Yes, sir.

(Deposition of John I. Wells.)

Q. Did you ever see Mr. Hunter write?

A. Not very much; I don't know whether I could identify his signature or not.

Q. Will you look at this sworn statement, dated September 25th, 1901, and will ask you whether or not that is the signature of Edward Abel Hunter?

A. I could not say.

Mr. GORDON.—That is all.

Redirect Examination.

(By Mr. BUNDY.)

Q. Mr. Wells, you gave that deed to the Barber Company about four years ago? A. Yes, sir.

Q. The evidence shows a check of the Barber Lumber Company, to John I. Wells, October 8th, 1906, the date of the deed shown you, for \$1,250 in payment of the same land as mentioned in the deed; I will ask you as to whether or not that refreshes your recollection as to the deed.

A. It must have been, because that is the only \$1,250 I remember getting of the Barber Lumber Company.

Q. Did you execute the deed on the same date as the check bears? A. Yes, sir.

Recross-examination.

(By Mr. GORDON.)

Q. I notice that the deed was for the consideration of \$800; what was the purpose of putting \$800 in the deed when you were getting \$1,250 for the land?

A. I don't know, you will have to ask Mr. Chap-

(Deposition of John I. Wells.)

man; it was at his request that Blake drew up the deed, and I signed it.

Mr. GORDON.—That is all.

**[Deposition of John Kinkaid, Recalled on Direct Examination.]**

The witness, JOHN KINKAID, recalled on direct examination, testified as follows:

Direct Examination.

(By Mr. BUNDY.)

Q. There has been some evidence, Mr. Kinkaid, with reference to second deeds taken from some of the entrymen and entrywomen, the early ones; do you know anything about that?

A. Yes, I think I know all that there is about that, except the actual taking of those deeds from the parties, and it occurred in this way, and it occurred with respect to the Boise Basin group of claims only, and the first titles that were purchased up there. That is, it was due to the first 40 to 60, or maybe 70 titles that were purchased up there; there were more new deeds gotten from the parties; it arose in this way, and to be given in their chronological order, I would say that there was someone who told Mr. Pritchard, at least he told me so, that one of the entrymen told him that he would like to get his deed back and give a new deed, a subsequent deed, and Mr. Pritchard referred him to me. I don't know who the man was, I can't remember, but it was one of those who came to me, Mr. Pritchard had told him that I had his deed, and he came to me and he said;

(Deposition of John Kinkaid.)

“Have you got a deed of mine for land in the Basin?” and I told him “No.” I had taken a deed, but it had been delivered to the purchaser, and he said, “Well, I wish you would get that back; I sold immediately after I had paid for my land, or immediately after I got my receipt, the next day, or the same day,” or something of that kind, and he said, “I don’t think it looks very well, and I don’t want my wife (or somebody else) to know anything about that, that I did it.” I told him that he had a perfect right to do it if he wanted to, and needn’t worry about it, and he said, “Well, you get me that deed anyway, and it will save me a great deal of worry and sleep, because I don’t want people to know that I gave it that early after I had gotten my Receiver’s final certificate of entry.” I went to Governor Stunenberg and told him what this party had said, and I told him that I wanted that deed back, and said there was no necessity for it, and I told him that made no difference, and if he wanted to do it, a new deed would be as good as an old one, and to get it for me, and I had to speak with the Governor several times about it, and it went quite a while, and then he brought it to me one day after I had given up all hope of getting it, and I suppose that I prepared the new deed; anyway, a new deed was prepared when I got the old one, and I suppose I prepared it, and I took it up to Mr. Pritchard, and it was executed; Mr. Pritchard likely knew the man better than I did. I didn’t know many of those people, but very few of them, and he got a new deed and I returned it to



(Deposition of John Kinkaid.)

the Governor, and I think it was quite a time after that, but I can't give dates at all, but the Governor came to me and he says, "I have heard from my people who purchased this land, and they say that there is a lot of those deeds that are defective," and I asked him in what respect they were defective, and he said as to consideration mainly, and that in one instance the date of the acknowledgment had been left out and that in some instances the date of the acknowledgment was different from the date in the deed; that some of the deeds were made by married men and they had not been executed by their wives, or that they feared that was so, and that there might be some homestead interest in the property yet that had not been conveyed. I told him that there could not be anything in that, as I understood it, and not having my law library statutes, I went to Judge Wolf, who is now on the District Bench up there, State Bench, and I asked him about it, and he showed the Statutes, and it was my understanding that that was entirely unnecessary; that nothing effected the homestead in that State, unless a notice that that particular piece of ground was a homestead had been filed of record under the law, was necessary for the wife's signature and separate acknowledgment, and I told the Governor that I didn't see any necessity of getting those deeds, it would cause a lot of trouble, and he said that it didn't make a bit of difference that his people wanted them, and my construction of the law didn't go with their Wisconsin attorneys, that that was their idea, and he wanted



(Deposition of John Kinkaid.)

to comply with it, because, he said to me that likely they would hold him responsible for not fully complying with his contract any way, as to time in getting titles there, and the amount of timber that should have been in that contract in the Boise Basin, and he said he was not going to have any trouble with them at all, for me to get those deeds, and he brought me a number of them.

Q. (By Mr. GORDON.) How many do you think you had?

A. I think between 30 and 40 of those deeds that he brought me— and he told me that whatever it cost to get new deeds to pay for it, and he would repay me, and that it would come out of his pocket, and not to make it any more than I could help; but he would pay me, and he paid me \$200, but that was a long time afterwards. The Governor was a man that would certainly pay what he had obligated himself to pay, but it was a long time before he could get to it, unless he was dunned; he was dunned a great deal, but I didn't do that. I went to Mr. Pritchard and I said, "You have taken these deeds, and I want you to get the new deeds from these parties," and he wanted to know what excuse or reason he should give them; he says, "Those men have gotten their money and sold their land, and have nothing to do with this, and unless you pay them something they won't want to go to all this trouble, but there is nothing I can do for them, and that will be asking a favor from them to get them to do that," and I told him practically the same as Mr. Stunenberg had told me

(Deposition of John Kinkaid.)

that the people who owned the land wanted the deeds and that we had to have as many of those deeds as we possibly could get, and it didn't make any difference to me what it cost, that I would pay it to him, when I could get it, and he agreed to go ahead and get those deeds and I was to pay him for doing it, and I paid him; I know I paid him a couple of hundred dollars for that purpose, and he told me that it was much more trouble to get those deeds than it was to buy the land in the first place.

Q. (By Mr. GORDON.) The property that you got those deeds for, were in which of these sections that you have referred to?

A. They were only, absolutely only in the Boise Basin group.

Q. (By Mr. GORDON.) How long after the original deeds were made were the new ones given?

A. It might have been six months and it might have been a year, and it might have been more than a year.

Q. (By Mr. GORDON.) Can you think of the name of any one person you got a new deed from?

A. Well, now it would seem that I ought to, but those names were just names to me; a great majority of them I didn't know.

Q. (By Mr. GORDON.) Would you remember them if you would see the names?

A. Those names, I remembered that they were men who sold, but that is all that I could testify to.

Q. (Mr. BUNDY—Resuming.) Did you ever advise or direct any person to locate or take up tim-

(Deposition of John Kinkaid.)

ber lands in the Boise Basin, Crooked River or 6-4?

A. Yes, I did; people up in the Basin came to me when they came down to Boise, especially in the latter part of the year 1901-02, and 1903, and said that everything was being taken up there by people outside, and they were losing their rights up there, and I advised them to file upon timber lands and hold their lands there until they could get good prices for them.

Q. Did you at any time advise George Wheeler in Portland with reference to taking a timber claim?

A. Is he that newspaper man, a tall, dark man—Yes, I might have; did he testify that I did?

Q. I don't remember.

A. Well, I know what it was; I never was in Portland but once until the spring of 1903, and I don't believe that I saw Mr. Wheeler the first time I was there; I know that was what he evidently referred to; his testimony was about something I said to him in reference to the Hood River country in Western Oregon. I was engaged, at that time, in the spring of 1903, in promoting and starting a canal company, and canal, for the purpose of irrigating lands at Hood River. We never got very far in the matter, but we had made survey, we had got a right of way about 26 miles, and while I was there a great many timber cruisers came, and the lands were being taken up, and had been pretty thoroughly taken up on sides of Mt. Hood. One cruiser told me there that he had some men, and his price was \$125, for filing people on them, and I told him that I didn't

(Deposition of John Kinkaid.)

want to file, that I supposed all of the lands in Oregon were gone at that time, and he said that he could get plenty of land, that had good timber on, and that was in my mind when I was in Portland,—which I think was about 70 miles west of there,—a few days afterwards, and I met Mr. Wheeler; I had known Mr. and Mrs. Wheeler in the Boise Basin; he was a carpenter up there, and contractor, and I knew his wife and him at Boise; she had worked in the Post Office a long while there, a most estimable woman, and they were very nice people, both of them, and when I *was* Mr. Wheeler, I said, “Why don’t you take some of this timber land”? He said, “Don’t know but I should do that,” and I said, “You ought to be able to do it,” or something to that effect.

Q. Your conversation, then, had reference to the Hood River lands?           A. Yes, that is all.

Q. Do you know Norman H. Young?

A. Yes, sir; very well.

Q. Do you know about his entry?

A. He was one of the brightest and best men in the Boise Basin.

Q. State what you know with reference to his entry?

A. I know that he entered, and I know that I bought his claim afterwards, and I understand from you that he testified something about my telling him to file, and I probably told him to file, and told him it was better for him to do it than those Wisconsin men to do it, as he was there at Centerville; he lived

(Deposition of John Kinkaid.)

in Centerville, was born there, and lived there all his life, and I told him I thought he had better locate lands in the Basin and hold them.

Q. What were you paid by Mr. Sweet or by Mr. Sweet and Mr. Stunenberg for trying to secure title to the Boise Basin lands before you left for Thunder Mountain?

A. Nothing whatever, because I had not bought any, and I was simply a kind of depository for the money that Mr. Sweet would leave me for the co-partnership business that they had.

Q. When did you first learn that Mr. Sweet had sold out to Stunenberg, or to anybody?

A. Well, I don't know; Sweet and Governor Stunenberg were together there sometime in January and February to my recollection.

Q. You are speaking now of when Mr. Sweet sold out his interest to Mr. Stunenberg?

A. No; when Mr. Stunenberg took an interest with Mr. Sweet when they were trying to get up a deal, and go and sell it.

Q. Did you know what that deal was?

A. No.

Q. Did you afterwards have anything to do with getting a settlement between Sweet and Stunenberg over some of their matters?

A. What you refer to it, I think, some testimony that Mr. Worthman gave, and it was my recollection when Mr. Worthman testified to that, I think that was the only thing that would have called my attention to it, or made me remember anything about it



(Deposition of John Kinkaid.)

now, it was that Mr. Worthman was mistaken about that; he gave me credit for having done something for Mr. Sweet there which I would really gladly have done, but which I didn't do, and I would have done Mr. Sweet a favor any time, but it seemed that Mr. Stunenberg had Mr. Sweet's money when Mr. Sweet had sold out to Mr. Palmer, or to those other parties; that Mr. Stunenberg had kept the money and had not delivered it to him, and Mr. Sweet had been writing to everybody about it, to Judge Richards and to Mr. Worthman, to get a settlement. He wanted his money and Mr. Worthman testified that I got the settlement and contract of settlement, and that I took it down to the Bank of Commerce. Now, that was not true; he was simply mistaken about it, but Mr. Worthman did ask me, because he and I were very intimate friends and that was one of the pleasant things I had out of the Legislature; he was just back from the Philippines, and we were in the State Senate together there one session, and he came to me and said, "Can't you get this thing settled up?" and I told him I didn't have anything to do with it, but I did tell Mr. Stunenberg, "If you owe Sweet anything, you ought to pay it and not let it drag along any longer," and that was the last I ever heard of it.

Q. Did you draw any contracts of any kind between Mr. Sweet and Mr. Stunenberg, in any of their matters?

A. No, not with reference to timber matters, because I was not their attorney.

Q. Did you ever see any of their contracts between each other?



(Deposition of John Kinkaid.)

A. No, there was some reason why—if they had a contract between themselves individually I never saw that; there was some reason why I did not, there was some reason why they didn't want me to see it, and I never saw the contract which Governor Stunenberg had made with Mr. Palmer or Mr. Barber; he asked me about my construction of it several times without showing me the contract and I told him that I didn't construe contracts that I had not seen.

Q. Did you ever see it?

A. No, and I think the reason was because he was much excited over them holding him to it; I think the reason why I never saw the contract was that he didn't want me to know what he was getting out of the thing; I understood that he had an equity, that he was being carried.

Q. Did you make out any filing papers for any entryman or entrywoman prior to the time you went to Thunder Mountain, or returned from Thunder Mountain?

A. I might have done so, I don't know; if I did I don't know who it was, and I might have done so.

Q. Do you remember a man by the name of Homer Granger who entered among the first ones up in the Boise Basin?

A. I remember him from '98, when I went in there, he worked for me a year, at different times.

Q. State what you know about his entry.

A. Well, he came to Boise sometime I think in December and I want to correct my testimony in regard to saying that Nugent and Anderson told me what Carl Payne, the District Attorney had said

(Deposition of John Kinkaid.)

about people filing upon the timber lands. It was, I believe, that Nugent and Anderson also told me that, and I know that Granger told me that; I might be mistaken and only Granger told me, they were very much afraid that it would give them and their families a lot of trouble if they went ahead and did it; and he had worked for me in the mountains, was a miner, and we had been good friends and I told him I thought it was a shame for a man to be bulldozed out of his rights to file upon any land that he wanted to under the laws of the United States, and that my construction of the law was to the effect that no man could enter into any of the Government lands if he could not enter the timber lands, and do it honestly, and I told him to go and see any lawyer that he liked about it, that if he did that then he would be better satisfied, and I understand he says that I paid him some money for that purpose. I know I paid him some money at that time and I know what money it was too, it was money that I had owed him for several months for mining labor for me. I paid him \$55 and I think that is what he referred to. I don't want to have credit for having done something for Granger more than having paid him what I owed him.

Q. What bank accounts did you carry in 1901 and the following years that you were in Idaho?

A. I carried a banking account in the First National Bank of Idaho for myself and others, and that was closed sometime in the summer, I think, or practically closed up and the money drawn out.

(Deposition of John Kinkaid.)

Q. Summer of what year?

A. The summer of 1901, and then I had Mr. Bowen's account, that was an agency account for Mr. Bowen, as I have already testified to, and that account was just about closed, or entirely closed and settled up when Mr. Ingalls, the gentlemen I have mentioned before, came to me one day and said, "I want you to see to some matters of mine; I am going to Texas pretty soon for the winter, and he gave me that day \$1250. I think it was likely his draft drawn on Brownwood, Texas, that he gave me, and I went over to the First National Bank, and when I went to deposit it, I thought about my other account, and it was closed, and I just put "Agent," the word "Agent" in my pass-book, and the next few days I began to check on that and paid it out and he paid me, I think, \$400 or \$600 more before he went away, and he subsequently sent me other money, but I never drew any of those checks as agent because I commingled that trust account of Mr. Ingalls with my own account, or with the bank account.

Q. So that you kept all the money arising from Mr. Ingalls and all of your own personal accounts and Sweet's accounts all in the same account?

A. All the money that I had in that account, and I paid for my own board and for everything that I had, all the business that I transacted in the bank with various people and myself, from that account, including the purchase of this land.

Q. Did you ever employ or procure Downs to cruise for you in either of the Crooked River, Boise Basin, or 6-4 countries?

(Deposition of John Kinkaid.)

A. No, he paid me some little amounts several times, I never employed Mr. Downs.

Q. There is some evidence of your having employed Harry Worthman in the contest cases of Arthur Anderson, and Bert Nugent and others; can you state the facts about that?

A. Yes, John Wells was speaking to me and he said he had received notice from his brother Harvey at Centerville that there was some contest to be held, and for him to employ counsel to do the business and to make a demand for the hearing and do whatever was necessary for the defendants, and John said he didn't know who to get and he wanted me to see about it, and I told him I didn't want to do it; that I was not practicing and would not want to be there, and I didn't want to do it, and he had better get somebody else, and he said, "Who would you recommend?" and I said I didn't care to recommend anybody, and he knew that Worthman was a friend of mine; at least he asked me to see Mr. Worthman and see if he would not make the appearance for his brother, and I think perhaps at the same time, or the next day or so afterwards, he heard from Hunter, and perhaps Ball and Arthur Anderson, anyway the applications were made by—I made an application to Mr. Worthman to represent those boys, and defend their titles. As I understood it, they were all right, and straight, and they were the only Basin men that I found at that time were really getting their lands. It looked to me that everybody else outside that country were getting their lands, except those that

(Deposition of John Kinkaid.)

lived in the Boise Basin, and I asked him what he would charge, and he said he didn't know, but he would make the application and let them arrange for the fees when he came down, as it would not cost much to make the application for the hearing, and I told him to file the papers, and he did so, and I never paid any more attention to it until afterwards, and I think it was a year afterwards, a long while, that those hearings came up, and when they came to have those hearings, Mr. Worthman was engaged in the promotion business, of a very large canal and irrigation proposition also, on the Emmet Bench, and had been engaged in the business for several years and he was just about to consummate the deal, and raise the money, I think it was several hundred thousand dollars that he had to promote the deal. The Examiners were there, as I understood it at the time, and they were looking at the property and he could not, or would not, devote his time to anything else, and the boys went and hired Frank Martin, and Worthman did nothing about it whatever except to appear a few times, as I understood it.

Q. Did you pay Mr. Worthman something for that?

A. I paid him; Mr. Worthman I don't think ever made any bill for it in writing, but he came and said, "Those men have never paid me anything and you are the man that hired me," and I told him that that was certainly true, and I asked him how much it was; I didn't suppose it would be any great amount, and he said it would be \$250, and I gave him \$100 then



(Deposition of John Kinkaid.)

and I said, "That is all right," and subsequently came to me and he said he wanted me to go on a note with him at the Bank of Commerce for \$150, for the balance of that fee, and I did so.

Q. And you afterwards paid the note?

A. Yes, I paid it. But I didn't pay that note for a good while because I was getting pretty hard up, and I think the last of that note was paid when I sold some mining property up there, the Buckskin property, perhaps in 1906 or 1907.

Q. Did Governor Stuenenberg ever repay you the \$100 you paid, or the \$150 you subsequently paid on the note?

A. No, he didn't. I never said anything to Mr. Stuenenberg about it.

Q. It appears from the stub-book of Mr. Stuenenberg that on December 17th, 1903, he gave a check to John Kinkaid, and it is noted on the stub,—“for expense for trial commission”; do you know anything about, was it to be charged to your commission?

Q. Was that about the time of the hearing?

A. Yes.

Mr. GORDON.—I will state to the witness that there was some question in the mind of Mr. Bundy and myself whether the “Com.” in reference to that item was “W. M.”

Mr. BUNDY.—There was no question in my mind; I will show you how it was written. (Indicating.)

A. I can tell you all about that. That word



(Deposition of John Kinkaid.)

"Com." simply meant about his own bank, or the bank of his brother down there in Caldwell, so he could keep his accounts straight, but that was out of that fund that he was to purchase the Crooked River tract with, and he would use the money out of that fund, which was a commission fund, and which was the accumulation of the \$150 each upon the claims which he had not paid for in the Crooked river tract, and that was just simply a fund that he used that out of; but it was my own money, and you will find all along, if you have a true transcript of his checks, you will find all along there that commission account I think for other people, and for other things, and it was simply to appear that way to his own bank so he could keep that account straight.

Q. On December 31st, 1903, there is a check for \$380 to John Kinkaid for commission and expenses.

A. That was the same thing, that would be the same thing.

Q. I will ask you generally, whether or not, you had any arrangement with Governor Stunenberg with reference to his paying attorneys' fees or other expenses of the contest cases of Arthur Anderson, Bert Nugent, Harvey H. Wells, Ball and Hunter?

A. I had nothing of the kind; but I can tell you where we were both interested and the statement was claimed that these entries were fraudulent, and all other entries up there were fraudulent, that was the starter, and that if they knocked those out and showed that those were fraudulent, they would take them up seriatim and everybody else was the same

(Deposition of John Kinkaid.)

way, and where I was interested in it was this: I bought practically all of that tract up there in Boise Basin and all of the profit I would have made out of it had not been paid me, and in fact, I was out some money for that tract at that time and at the time of making the loan.

Q. Now, with reference to the large amount of money that was paid you at the rate of \$150 per claim for each of the 93 or 94 claims which you purchased in the Crooked River country, I will ask you if all the money went to you personally?

A. All of that money belonged to me, absolutely personally.

Q. Was it all actually paid to you by Governor Stunenberg?

A. Yes, that is, there was a large amount paid to me, I think about \$12,000, it might have been just a little more or less; I have it in my mind as I saw it in my books, about \$12,000, and all that commission that was paid me and that belonged to me—it was mine, but Governor Stunenberg told me that he was working for those men Barber and Moon, as an agent to purchase that property,—

Q. (By Mr. GORDON.) What property?

A. The Crooked River property as a separate tract and separate proposition from the Boise Basin tract; that had nothing to do with his contract and that he was only doing that to help them out and that they were not paying him anything for that and not furnishing him any money for expenses for traveling or otherwise; that he was devoting his time to that

(Deposition of John Kinkaid.)

business, and that he wanted me to divide up that fund, not permanently, but to allow him to reserve half of it until the deal was through, until all of the property was turned in, that I should secure out there on the Crooked River, and that he would pay that back to me. It had formerly been charged he told me, by Mr. Palmer, that he was participating in my profits, or possible profits in the purchase of the Boise Basin tract, and Mr. Palmer had made that charge to Barber and Moon, as I understood it, and they had asked Governor Stuenberg whether that was true, or not, and he had replied that it was not, and it was not. There was no doubt about that. He was not participating in those things in any way and he was not to own the half of the profits that I should make on the Crooked River at all, but he said that he would hold that back, he would like to hold that back, and hold it for me, and he said that he would use the funds during that time and that I would get them all at once, and it would be better for me, and that would be when they had paid him for service in that connection, and that Mr. Barber was a just man and he knew that he would be paid for his services for whatever he had done, and his expenses. I knew that Governor Stuenberg, from his own statements only, was owing a great deal of money, I think it was \$40,000 or \$50,000, or something of that kind, and that he owed various people, but his credit was wonderfully good, and especially his banking credit; he could get any amount of money from any bank he wanted to, as far as I knew, and I told him that he

(Deposition of John Kinkaid.)

could hold half of those funds, and that was very early in the Crooked River deal; that was before any commission whatever had ever been paid me, and the first check that was ever drawn was \$4,000 to my recollection, as commission, and I went and cashed that check, and I divided the money with him. I did that with every other check that was ever paid to me on that account.

Q. On the commission account?

A. Yes, on the commission account, and nothing was given to me for it,—it was not a business proposition, but it was a friendly proposition.

Q. That applied only to the Crooked River tract?

A. Yes, and he agreed to pay it back, and would have paid it back if he had lived, and when he died there was owing upon that account a gross sum of \$1,875 according to my recollection, and that was one of my items of account. I didn't put in the account for the loan and return or division of these funds which I had let him have, because I had no evidence of it, no legal evidence under the laws of that State, and I went and presented the matter to Mr. A. K. Stunenberg, who was not his administrator, but he was the banker brother, and the one who saw to most of his business, and he said, "I don't know anything about that, but you ought to have some evidence of it," and he took a bankers' view of it, as he would naturally do, and he said, "If I believed that that thing was due you, I would pay you," and it was a pretty hard thing to face his incredulity, practically saying that I was misrepresenting things,

(Deposition of John Kinkaid.)

but he was honest in his beliefs and convictions.

Q. Was it ever paid you?

A. It never was, and I never put in my account for it; I didn't present it either for the balance that was owing upon the Boise Basin tract. I didn't present my account because they said they would not allow it, and I showed the whole thing, first I presented it to John Rice, a very prominent attorney in that country, attorney for the Stunenburgs, and I presented it to him, and to A. K. Stunenberg in the bank, and spent a day with them, and they agreed that they would check over that account and would allow me all that was just and legal, and they did, and I was paid the \$1,875, I think the balance, which would save been the exact balance upon the Crooked River account, and I was paid some mining accounts, and they filed my account in court, and it was allowed for more than they paid me, but they paid me about \$2,200.

Q. I understand they paid you \$1,575.

A. \$1,875.

Q. Was that for half of the commissions?

A. That was for all of the balance of unpaid commissions; that was the entire amount of the unpaid commissions.

Q. So that part that you split and returned to him, that never was paid?

A. That never was paid, and the only account that was not split was the \$1,875.

Q. Mr. Wells testified to having received a telegram asking him to come down here; will you state



(Deposition of John Kinkaid.)

how you came to telegraph Mr. Wells?

A. I think your letter from the Fairmont Hotel, San Francisco, the 24th of March, telling me to meet you here, about the 29th of March, 1902, and in which you say, "I have also sent for Wells to be there on Monday the 29th, and would suggest that you wire him upon receipt of this telling him where he can meet you." After that I wired to John I. Wells and asked him on what train going through Reno, Nevada, I could join him, and I got an answer at Reno saying that he would be through there the morning of the 30th, I think, and I came on the day before to Oakland; I had some business there and I came on down here, and I had been here 24 hours when Mr. Wells arrived.

Q. Will you state as briefly as possible, what became of any books of accounts or records you kept of these various timber deals in Idaho?

A. I am not a good bookkeeper, but I kept those accounts absolutely perfect, as they occurred, and they were kept in small account-books, and the first one that I kept the account in was the first timber account that I had for the purchase of the Basin tract, and I kept that in my office, or room and it was there in 1905, when I was out mining in the Black Warrior District; I built a mill up there, but I kept my room in Boise yet, and that book disappeared from my office.

Q. (By Mr. GORDON.) When was that?

A. In 1905. It disappeared from my office. I had a large iron box with a Yale lock on it, and that



(Deposition of John Kinkaid.)

lock was broken when I came back late in the fall of 1905, and that was the only thing that was gone out of that box; my bank-book, two bank-books, really I kept myself; I don't mean my pass-book, my account with the bank, and every account that I had had in the State of Idaho, I had in two small account-books, one of them was about a quarter of an inch thick, and the other was about three-quarters of an inch thick I would say, and those I carried with me because they had most of my accounts and all my mining transactions that I had done in that State and part of my Colorado business and accounts; I carried those with me into the Black Warrior, and had them there with me, and those I saved. I saved those and had them at the Borah trial; had them up there when I was taken up there upon the indictment at Boise, from the State of Nevada and I carried them upon my person in order to preserve them. In those books there was an absolute account of every check showing to whom the check was drawn, the date, and usually, all on one line, some indication as to what it was for, so I would understand it. There was a two-page ledger account, single entry I suppose you would call it, and then every claim that I bought, that was in that bank-book and in that book generally was the Crooked River tract, and there was an account of the purchase showing every item and everything that was paid in the purchase of all the land I purchased in 6-4. That was itemized and I could have testified to every item in all of these transactions if I had it. I took those books back with me,

(Deposition of John Kinkaid.)

to Rawhide and I kept them in my office; it was in a new mining town and there was not a safe in the town, and I kept them in my office, I practically lived in that room, slept and stayed in that office, and no one had a safe in the town at that time, and I didn't deposit those books in any safe deposit vault because there was not a vault in the town, and in August last I went out to look at some mining property about 100 miles east of Rawhide, or more, with a team, and was gone eleven days, and the last day I was out, at Lodi, which is 40 miles east of Rawhide, over a very sandy road, a bad road, and in the morning I was driving in to Rawhide over the sand and about 9 o'clock or 9:30, I saw a great smoke in the direction of Rawhide, and that was the fire that consumed the town of Rawhide, and all of the business portion of that town, including my office, and everything that was in it, except one drawer of the table that Mr. Ross, a friend of mine, pulled out and carried out and saved for me, and he almost lost his life over it. And the account-books which I have referred to were destroyed in that fire, and everything else that I had in the State of Nevada in the way of personal things, were destroyed.

Q. Can you testify here without the aid of this documentary evidence, without this data?

A. I could have gone over this data that you offer to me, but I can't remember what those various checks or accounts mean, except in a general way. I remember the outlines of the facts, but I remember them very largely from the way they appeared on my books.

(Deposition of John Kinkaid.)

Cross-examination.

(By Mr. GORDON.)

Q. You never gave anyone a copy of those books that you had, those account-books?

A. No, I didn't; there may be a copy of them, the Government may have a copy of them, I don't know.

Q. Were those books used at the Borah trial?

A. No.

Q. Did you offer them to the witnesses in the Borah trial?

A. I told Mr. Borah that I would explain, and testify to papers; those three items and the books, the reason I mentioned the checks is, that is the checks all supported the account, whenever it was paid in checks.

Q. You say one of those books was three-quarters of an inch thick?

A. It was about five and one-half inches long, and about four inches wide.

Q. How long did you carry that book about your person?

A. In Boise—I carried it there most of the time.

Q. What became of the checks?

A. The checks—I don't know. There was some trouble at Boise; I don't mean to judge, and say who got those checks, but I lived in Boise, stayed in Boise, was there when Governor Steunenberg was assassinated, and after all the difficulties that arose over the prosecution and trials, but I didn't have anything to do with those prosecutions, nor the defense in that connection, or anything of that kind. My friend

(Deposition of John Kinkaid.)

Governor Stunenberg was dead, and that was the end of it.

Q. I am asking you about the checks?

A. The checks I had in my room in the Marius Building which I kept whether I lived in Boise or not, and I kept all my personal effects that I had in Idaho—I kept my checks and all my books and things in a mahogany bookcase, and it had a closed bottom—the lower section closed up, and I kept a great many papers there, and in December, 1906, when I was preparing to leave for Nevada, I went through all those papers that I had there; I had something like 18 or 20 letter files of my correspondence in that State, and I didn't want to pay freight on all that I took all them and burned and I went over all my papers that I had brought from Colorado and books, and everything that I had that I thought were too old to be used, and I burned them up until I came to those checks and I have had some bitter experiences for the want of checks that I have given—

Q. Where did you put the checks?

A. I left those checks,—I put them in little envelopes that would be two or three inches thick and I labeled them and put them in the bottom of that mahogany bookcase. I left that bookcase there and gave orders to my friend Mr. Walters to have it shipped with a lot of my other stuff to Nevada when I should find out where I should locate in Nevada, or elsewhere, and he must have shipped that stuff to me in January or February, 1907; it was first billed to Lovelocks, Nevada, because I believed that I would

(Deposition of John Kinkaid.)

locate there in the Seven Trough mining district which was near Lovelocks, and they were billed there and after that the camp of Wonder was booming a great deal, further south of there, and I went down there and the railroad station for Wonder was at Fallon, Nevada, and I ordered those goods shipped to Fallon, and they were in a cart there when I was arrested at Wonder and taken to Carson, and from there taken to Idaho; the goods I ordered stored as I went through, I went through Fallon with the Marshal. I paid the storage man to take care of them, and he held those goods for nearly a year, fully a year. I was out in California afterwards and I never saw those goods or the bookcase that was crated and boxed, and after the fire in September 4th, 1908, in which Rawhide was burned down I remembered that I had that bookcase and those old papers over there, and I sent for that case, and I have it yet in Rawhide, and when the bookcase came the first thing I looked for was those checks and they were not there; those checks would show exactly to whom they were given, but, of course, would not show upon the face of them for what they were given because I never draw checks that way; where those checks have gone, I don't know.

Q. Did I understand that you are here not, only as defendant in this suit, but as counsel?

A. Well, now I think that was a mere matter of compliment or something of that kind on the part of Mr. Bundy; I have never been employed as coun-



(Deposition of John Kinkaid.)

sel in this matter; I am here as a defendant at Mr. Bundy's request.

STATEMENT BY MR. BUNDY.—What I meant by saying that I wanted Mr. Kinkaid to assist me in this case was not as Attorney, but due to his familiarity with the facts about which I wanted to interrogate Mr. Pritchard and in some instances Mr. Wells; that was what I referred to by saying that I wanted his assistance in the examination.

Q. (By Mr. GORDON.) Do you remember, or do you know Frank Martin, Ex-attorney General of the State of Idaho? A. I know him very well.

Q. Did you at any time tell him to draw on Frank Stunenberg, Agent for a bill, in the amount of \$187, or thereabouts, in payment for the records in the Land Office at Boise of the contest cases of Arthur Anderson, Bert Nugent or Abel Hunter?

A. I don't remember of telling him to do that; I don't remember why I should have told him to do so. I don't know that he said I told him so; I never heard what he testified in regard to that, and I don't know of anything of the kind occurring. I know that at the Borah trial, either by the counsel for the defense, or someone, that question was raised, but I don't remember anything of that; it was one of the things that I don't remember, but I might have done so, or I might have told him that I could not pay him anything because I didn't have the money.

Q. You didn't employ Mr. Martin in those cases?

A. No, sir; I had employed one attorney and the boys for whom I had employed him said that he



(Deposition of John Kinkaid.)

didn't stay with them; I had had enough to pay in being a good fellow.

Q. Did you ever have Mr. Worthman purchase any claims in the Boise Basin for you?

A. I don't remember that I had him purchase any claims, but all that is in the Crooked River tract, I think.

Q. Who were the deeds made to in the Crooked River tract?

A. To Mr. Rand, and if he did anything he might have taken those deeds for me and from Mr. Gifford and from some of the Omby family; he might have done that, they were clients of his, and it was with him or from him in some way that I bought some of those Omby claims.

Q. Do you remember that the deeds were drawn by Mr. Worthman and that the grantee's name was in blank, and that you afterwards filled in the name of Rand of Burlington, Iowa?

A. I don't remember—I never took a deed in blank in any of my business. I have been practicing a great many years, and I have never taken a deed in blank. Mr. Worthman might have written those deeds, and he might have drawn them to me, and I might have written in the name, but it was undoubtedly done before they were executed, so far as I found, and I ought not to have been mistaken about it.

Q. Now, when was the first occasion you ever met William Sweet?

A. I met William Sweet when I first went into

(Deposition of John Kinkaid.)

Boise Basin in the summer of 1908, I mean 1898.

Q. Did you in 1899 draw a contract concerning some mining property between Mr. Stunenberg and Mr. Sweet?

A. I might have done so; I don't want to be understood as saying that I didn't, but I have no recollection of that; I have transactions with Mr. Sweet, and I might have done it, and if I did it was undoubtedly an accommodation.

Q. Now, did you have any arrangement with the First National Bank of Boise, or the First National Bank of Idaho, I believe it is, by which you could go to that bank and get money for the purchase of those claims whether you had money to your account, or not?

A. No; and that is one reason I have not examined this account here; I know that the account cannot show the proper transcript, and I can't swear without having my books here; I can't swear that it is not a proper transcript, but it undoubtedly is, I guess, and if that thing is right it undoubtedly shows—an accountant can take that and show that I had no such arrangement of that kind; I have heard a good deal about that thing, but I never had that kind of an arrangement with that bank or any other bank.

Q. Did you have an arrangement with that bank by which a person selling a claim, could take a note or letter to the bank, together with a deed made out to anyone of these three persons that have been named, Mr. Palmer, Mr. Rand and Mr. Long, and the bank would pay them the consideration mentioned

(Deposition of John Kinkaid.)  
in that deed?

A. I had nothing of that kind; if I had drawn a check there on that bank that would have appeared an overdraft I would have been called up at once, and I would have been told about it, and would have been asked to pay my check, and of course this account may show that some days I had an overdraft over there, but the overdrafts that I had during any of this time were included in my bank account, but would have been for a very short time only.

Q. You might, or you might not have had an overdraft of \$300 or \$400 for a day or so?

A. That would have been very rare; I remember in 1905, for ten days when I was operating at Black Warrior Mining District I had lost a good deal of money, and I learned in town that an overdraft of \$500 or \$600, that is, my checks were being held up, the men had not been paid and I went in and made *the good* immediately, and then my checks were paid. My checks were in the bank—

Q. Your account in the First National Bank was in the name of John Kinkaid, Agent?

A. Yes, I know it now.

Q. And you put everybody's money that you had into that account as agent; it was the only account you had there?

A. Yes, everything, and when one has but one bank account he can't very well do otherwise, at least that is my system of books.

Q. Did you have any understanding with Governor Stunenberg by which he should deposit the money

(Deposition of John Kinkaid.)

that he gave you to your order at the bank, instead of making it payable to you in check?

A. Yes, I did; that occurred especially with that Crooked River tract, but it occurred each time when I had telephoned him, or Senator Borah that I had taken titles, and that I was drawing checks upon the bank and that occurred because I was their buyer in taking those deeds and titles; and sometimes I didn't go to the bank—I didn't have any clerks or assistants, and I was drawing a good deal more money than my account was, and I presume they made several different deposits the same day. My recollection is that they made several deposits of \$6,000 each for me about the first days of the purchase of timber in the Crooked River district.

Q. There were a great many more than three or four of those entries, were there not?

A. I remember those times, and they went and put those amounts there for me. That only occurred about the beginning of that purchase when I was so very busy, the first two or three days and it occurred once with Senator Borah, when I telephones him to go and deposit some money for me that I had paid out on 6-4, or was about to pay out on the 6-4, more money than I had.

Q. It all amounted to \$47,000 or \$48,000?

A. Which?

Q. That you obtained in that way, that you had deposited to your credit in the First National Bank?

A. I don't think that it amounted to that much, it only occurred, as far as I can remember, a couple

(Deposition of John Kinkaid.)

of times.

Q. Do you understand that I am talking about checks that were drawn to the bank and placed to your credit, and not drawn to you?

A. That is the way they did it, when I telephones them or told them, but I can't tell you how much that was.

Q. And do you remember whether or not that time extended from June 17th, 1902, to December 31st, 1903, about 18 months?

A. Anything that occurred at that time would be upon the Boise Basin tract; that was one way that they might have transferred money to me, but Mr. Borah had nothing to do with that on the Boise Basin tract.

Q. Do you remember an item of \$500 that was placed to your credit December 31st, 1903, by Governor Stunenberg on an option for William Sweet?

A. On an option—Let me see that paper; I have no recollection of that matter at all, and I don't think I ever had anything to do with that. I don't think that that will indicate that I did; I don't believe that that has anything to do with me.

Q. It was a personal check of Mr. Stunenberg's that was placed to your credit at the First National bank; it shows that it was placed to your credit?

A. I don't desire to take up any time with that, because I don't know what it means; I don't know anything about it.

Q. I beg you pardon; it was from the stub of Governor Stunenberg, instead.



(Deposition of John Kinkaid.)

A. That is something I had nothing to do with.

Q. Mr. Kinkaid did you ever loan or advance any money to any person to make final proof in the 6-4 entries?

A. Yes, I think I did.

Q. To whom?

A. I loaned some money to Alexander Ellis, a blacksmith, and I lent it to him for himself; I lent him \$800 for himself, and I think Harbaugh; there was nothing about that matter but what I want you to know fully, and I think I remember pretty well all of it. I knew Mr. Ellis very well; he owned a couple of lots over there, and a couple of buildings, he was a good strong Scotchman and I used to watch him shoe horses, and he told me—he brought me his papers when he was about to make his filings on 6-4; he was one of those men for whom I prepared the papers, but I had seen him before and knew him quite well.

Q. Lived at his house, didn't you?

A. No, sir, not until afterwards; he was mistaken about that I think, and about the time he was ready to make final proof, he told me when I happened to be talking to him one day, and he told me that he had gotten two of his boys and their friends, being Harbaugh, and Coleman, and himself filings up there and that they were going to have some timber up there, and they were not going to be fools like the rest of those timber people; he said he had been in the timber business in Michigan and had seen the first people, and the poor man who took up timber claims lose their timber when they might have gotten little



(Deposition of John Kinkaid.)

fortunes out of it, and they were going to take that timber up and hold it; and I told him I hoped he would do so, and a short time after that, and I suppose it was when they were about to prove up, to make their final entry, Mr. Coleman came to me; I had met him in the blacksmith shop, or had met him at least when he had filed, and he came to me and said, "Us fellows are up against it, and we can't prove up," and he said, "I was to get my money from somewhere east, my people, and I can't get mine; I thought I had arranged all right for it, but Ellis can't prove up either; he expected to get his money from Neal, of the Capital State Bank of Boise, and he was unable to borrow it there but he can't get it at this time;" and he said, "Ellis told me to come and ask if you will lend him the money," and he said he asked Ellis why he didn't go to Mr. Kinkaid and see if he wouldn't loan him the money and he said he was ashamed to go and see me after the talk he had made about the thing, and he said that Ellis wanted to borrow the money for himself and for Mr. Harbaugh who had failed to get his money, and would give his note for it, so I gave Coleman what money I had in my pocket, what money I had available at that time, and I think I gave him \$400, and I went out and got the money, and it might have been a banking day; I might have drawn it out, but don't know whether I did or not; when I was living at the Idanha hotel I sometimes kept a package of bills over there in the safe; Mr. Shubert would put it in the safe for me, and I might have had it there and paid him

(Deposition of John Kinkaid.)

from that; when I was in the Pearse building there was a vault in that and I sometimes kept a tin box down there.

Q. You either got the money out of the bank or out of some place where you kept money?

A. I remember I had \$400 in gold and I gave it to Mr. Ellis.

Q. In his shop?

A. Yes, in his shop, in gold not in bills.

Q. And was that for the Harbaugh claim?

A. He told me that he had gotten—

Q. Did you loan him that for Mr. Harbaugh?

A. No. The Harbaugh money I gave to Mr. Coleman.

Q. You gave the Harbaugh money to Mr. Coleman?

A. I took a note with him for \$400, and Mr. Ellis signed it.

Q. Did you loan Mr. Coleman any money?

A. No.

Q. Did he ask you to loan him any?

A. No, he didn't.

Q. Do you know where he got his money?

A. No, except that I heard him testify at the Borah trial that he got it from somebody else.

Q. Now, these 6-4 lands that you have purchased, you didn't pay for them out of the money that you got from Stunenberg?

A. I got the money each time after I bought the land; I would get the money from Mr. Stunenberg or from Senator Borah.

(Deposition of John Kinkaid.)

Q. How much money did you get from Senator Borah? A. From \$6,000 to \$10,000.

Q. And did he give it to you in check or cash?

A. He gave me one check for \$1000 and he gave me that in advance, because I deposited that in the First National Bank, and I gave my own check to Riley Reeves for his claim, for \$1000.

Q. Did you buy all of the claims in the Boise Basin, Crooked River and 6-4 country that were acquired by Governor Stunenberg?

A. All that I know of this acquiring, and I presume that he was not acquiring titles aside from those at that time.

Q. It was his instructions that he should not be known in the transactions for the reasons that you have assigned?

A. I didn't say that Mr. Stunenberg was getting the titles because that would raise the price, and I never went out of my office to ask any man to sell his property or title, and get his title, in fact, I hoped that most of those fellows would hold their land until it got more valuable.

Q. I understood you to say that a week or more before the State made its selection in 6-4, that Downs came to your office and paid you \$20 in advance for certain information you had tried to obtain for him?

A. He told me to go and find out all I could about it; I think it was a twenty dollar gold piece.

Q. Have you any idea who the man was you got that information from?

A. I don't now have the least idea.

(Deposition of John Kinkaid.)

Q. It was not the Governor?

A. No, I don't think it was, but I would have asked Governor Morrison for that perhaps sooner than anyone else.

Q. It was not his private secretary?

A. No, it was the same private secretary he had, but I was never very well acquainted with him. I don't suppose I was in Gov. Morrison's office more than two or three times during his term of office.

Q. And you don't know who it was?

A. I don't know who it was; all I do know about it is that there was nothing mysterious about it, and nothing wrong about it.

Q. It was not anybody that you had known before that you got that information from?

A. I do know whether that is true, because I would likely remember it.

Q. And there was no question about it being turned over to you when you asked for it?

A. No, and I attached so little importance to what I did in the matter that the facts had entirely escaped my mind until the trial.

Q. You had a plat given you of lots in 6-4 by Downs, and there was indicated on that plat what he thought the State was going to select; did I understand you to say that?

A. Yes, just as ordinary plat, and he had indicated on there the pieces he knew about.

Q. And did the marks that he made on there correspond with those that you saw indicating what the State would select, at the State Land Office?

(Deposition of John Kinkaid.)

A. My recollection is that I was in the State house at the time, but whatever I got in regard to it, I got in a few minutes.

Q. Do you remember how many pieces of land Downs had checked on there, as the properties he wanted?

A. He had indicated what was really good timber land.

Q. How many pieces?

A. There was a great number; he undoubtedly knew the larger portion of the land; I think he had an idea of the larger portion of the land that the State was about to select.

Q. You say that you had met A. E. Palmer?

A. Yes.

Q. Do you know where he is now?

A. No, I don't know anything about him now; I have seen him in Boise, but he was a very pleasant appearing gentleman, but we didn't have anything to do with one another; it was not my business to interfere with Governor Stunenberg's business; Mr. Stunenberg and Mr. Palmer were not on the best of terms at one time I know.

Q. Do you remember the occasion of Dennis Thornton coming to your office the first time you ever saw him? A. Yes, I remember he was there.

Q. Do you remember that he brought a letter of introduction to you from A. E. Palmer?

A. He might have done so, but what he asked for I didn't have; I didn't think much regarding it; I didn't know who was coming, or anything about it

(Deposition of John Kinkaid.)

until this man came there, and then I remembered that Governor Stunenberg had left an envelope there.

Q. That was there when Mr. Thornton arrived, was it, and you gave it to him?

A. Yes, and I also gave him some files of the newspapers.

Q. Did you see what was in the envelope that you gave Mr. Thornton?

A. I don't believe I did, I don't remember.

Q. I understood you to say it was a plat?

A. Yes, but I don't know what was on the plat that he left there; I gave whatever he left to the man that called for it and that was Mr. Thornton.

Q. Did you subsequently have a conversation with Mr. Thornton, Mr. Palmer and Governor Stunenberg at the Idenha Hotel?

A. I don't think so. I met Mr. Palmer, and it might have been that Mr. Thornton was present.

Q. You have spoken several times of the sale on interest that Mr. Sweet had made; I think you said that he sold out to some of Stunenberg's people; do you know what he sold, or what he had to sell?

A. That was just the trouble; they hadn't anything to sell, but as I understand it,—but they had secured a purchaser for those lands, they told me they had secured a purchaser for those lands, when they could be purchased, and they had gotten funds for it all right.

Q. When was that?

A. That was sometime in—I suppose about the



(Deposition of John Kinkaid.)

first of April, 1902.

Q. Was that the time that Mr. Sweet had told you that he had sold out?

A. When he had sold out entirely you mean?

Q. Yes.

A. Yes, if he ever told me that it was at that time; I understood that so far as making the deal was concerned that Mr. Stunenberg had charge of the thing from that time on. I didn't know of anything he sold, because I didn't know of anything they had bought.

Q. But he had sold whatever interest he had in it?

A. He turned the sale over to Stunenberg, and it was agreed that if the property was taken that he should get some amount out of it.

Q. And what was Mr. Stunenberg to get?

A. I have heard, but I never saw the agreement.

Q. You talked with Mr. Stunenberg about it, didn't you?

A. Yes, but he never told me entirely what was in it.

Q. Did he tell you that the Barber Lumber Company were going to carry him for a certain interest in the deal?

A. Yes, but I thought—that it was his equity; it was an equity that he had, or option, which arises very often in mining transactions, as I have seen it in the West, and it was something like this,—if he should repay to the Barber Lumber Company one-fourth say, of what that land in the Boise Basin

(Deposition of John Kinkaid.)

should cost, with interest thereon, and I think that they told him or he told me, that that would be six or seven per cent,—that he would be able to purchase it, and that was supposed to work out so that he would not have a great deal to pay as they were cutting timber and selling lumber.

Q. How much money did Mr. Sweet give you all together?

A. That I can't say any more than I have testified to, because the account was in the book that I lost in 1905.

Q. You endeavored to purchase all of the entries that had been made in the Boise Basin upon which proof had been made before you went to Thunder Mountain?

A. Not all of them; I endeavored to purchase a few of them, in fact, I didn't try very hard, because the first proposition I ran up against was that there was no final entry certificate issued.

Q. And when did you go to Thunder Mountain?

A. I left the 16th day of April, 1902; I returned the first day of June.

Q. And after your return did you buy all of the entries upon which final certificates were issued in the Boise Basin?

A. Oh, no, I don't think so, but I bought some running along there for a year or more, I bought something like 100 or 101 of them.

Q. How many had been made at that time?

A. I don't know.

Q. Did you buy approximately all?

(Deposition of John Kinkaid.)

A. I suppose so; I think likely that I bought the majority of them, but I certainly bought all that were made to Mr. Palmer at that time, except possibly one or two titles.

Q. You referred to taking second deeds at the suggestion of Governor Stunenberg, because counsel for some of the people he represented in Wisconsin, had suggested that the deeds that had been taken were defective in some particulars; and one of them was defective as to the consideration; wasn't any consideration mentioned in those deeds?

A. Yes, but the parties seemed to want a larger consideration when a smaller consideration was named. It touched their pride, and they wanted to sell for a large amount, and so some of the considerations were \$1.00 and some \$1,500 and some \$2,000.

Q. What was the objection, the amount of the consideration?

A. Yes, that they should express the exact amount that was paid.

Q. Did you take deeds from many men without their wives joining in the deeds?

A. I think some of the deeds were that kind, and that was one of the objections; I didn't know about their family affairs.

Q. Do you know how much money was paid you by Governor Stunenberg or Mr. Borah for the purchase of these properties, approximately all the property mentioned in this complaint?

A. Well, I can only compute that; there should have been \$800 paid for each claim.

(Deposition of John Kinkaid.)

Q. I mean 140 or 150 or 200 thousand?

A. I can't tell that.

Q. And all of the money that you received from them you deposited in the First National Bank?

A. Oh, no, not all money; most of that for the purchase of timber in the Boise Basin was made in currency, in cash, and there was a great deal of that given to me; I supposed it was kept in the bank and carried to me; there were some checks given to me, but it was mostly money.

Q. I notice here from this bank statement of the First National Bank that from November 6th, 1901, down to December 31st, 1904, you had deposited in that bank about \$141,000 and that on that date December 31st, 1904, your balance was \$83.33, now, did I understand you to say that during that time you had made some \$12,000 or \$15,000 out of these transactions?

A. No, I did not make—I really never made anything to amount to anything. I actually never made anything.

Q. Do you know how much money was actually paid you in commissions by Governor Stunenberg?

A. There is where the \$12,000 comes in, that was commission upon the Crooked River deal, and that was about \$12,000 that was paid me.

Q. And he paid you that in installments of about 11 or 12 or 13 installments?

A. I don't know how many, and as he paid me the amounts were divided between us, and he kept the account of it and so did I; it was an exact ac-

(Deposition of John Kinkaid.)

count.

Q. To whom did you sell the claim on which you located?

A. I sold that to Governor Stunenberg.

Q. Personally?

A. I made the deed, I suppose, to Mr. Palmer.

Q. And was that one of the first transactions that you had with him?

A. No, that was not; I don't know when I had that or anything about it, but I know that I wanted to hold the land, didn't think then that I would sell it at all, and the Governor got it one day when I needed the money.

Q. Where is this Mr. Bowen that you referred to?

A. Mr. Bowen is in New York, or Ohio.

Q. What is his first name?

A. His name is Samuel C. Bowen if he is alive, I haven't heard from him for several years.

Q. I understood you to say that the Barber people didn't employ Mr. Stunenberg to purchase the deeds in the Crooked River, that he was doing that to help them out, is that correct?

A. Well, what I said about that property doesn't signify; but what I understood was that they had nothing to do with the Boise Basin contract, the first contract that he had; they undoubtedly employed him.

Q. You got the commissions out of that also?

A. That is where I was going to make some money, yes. These three transactions were separate

(Deposition of John Kinkaid.)

and distinct, as possibly could be. During that time they took up a lot of scrip lands, but that was a matter I had nothing to do with.

Q. (By Mr. BUNDY.) They also bought a lot of land for millsite purposes, didn't they?

A. I heard that they did, but I had nothing to do with that.

Q. (By Mr. GORDON.) Was the first money that you received from Governor Stunenberg in any way connected with these transactions—I will ask you if you remember Mr. Stunenberg giving you a check in August, 1903, to pay Patrick Downs for a trip to Crooked river, a check for \$38?

A. He might have done so.

Q. Do you remember what transaction that was in?

A. No, I don't know anything about it, was that on a commission account?

Q. I don't think it was marked "commission." And then there is one for Patrick Downs to Crooked river to look up scrip.

A. Neither of those had anything to do with me, at least I don't know anything about those. He might have been in Boise and left such a check with me to hand it to Patrick Downs, to hunt him up and pay it to him.

Q. Now, the first check that you had from Mr. Stunenberg in connection with these timber claim collections I understand was June 7th, 1902, a check for \$2,500?

A. Whatever that may show; the first money I



(Deposition of John Kinkaid.)

remember was in currency that I had from him.

Q. This is a check that you had from him?

A. He might have given me a check, and whatever shows, why I undoubtedly had the check which was for the purpose of purchasing lands or payment for lands which I had purchased.

Q. And you gave back all of the money that either Mr. Sweet or Mr. Stunenberg had given you prior to that time without using any of it, is that correct?

A. Without using one dollar of it, because it was a trust fund for a certain purpose, and if I had wanted any of that money or needed any of it, I could have borrowed it of Mr. Sweet, or I could have gotten it elsewhere; I had money at that time. There is one matter about Norman H. Young, that Mr. Bundy asked me and I wish to say that Mr. Young gave two deeds, but the first was defective in some way; there was a second deed given from him because of the defective description of the deed; there was a quarter of a quarter left out, or something of that kind.

Q. Do you remember any of the persons that you tried to purchase from when you received that money from Mr. Sweet for the purpose of purchasing claims?

A. No, I don't remember now, because those names have become so familiar since, but I looked up some of those, or they looked me up; and some of them claimed that they had final certificates of entry, but when they went to get them they didn't have; I finally went to the land office and found that none of them had them.

(Deposition of John Kinkaid.)

Q. Did Mr. Sweet ever pay you anything for your services?

Q. You mean in trying to buy that land?

Q. Yes.

A. No, I didn't do anything, that is, I did not accomplish anything and I charged him nothing for it, and he would have done the like for me; he carried on transactions for me.

Q. Will you state when you met Mr. Palmer?

A. I can't say, but when he was there sometime, I presume I met him before I went to Thunder Mountain, I presume I did, but I don't remember the circumstances or anything about it except that I know this,—it was not in any other way than socially; he may have written that letter to me introducing Mr. Thornton.

Q. I have a number of checks here that I wish you would identify; I show you a check dated February 7th, 1902, to the order of John Kinkaid for \$2,150 signed "Frank Stunenberg, Agent," and endorsed "John Kinkaid," and I will ask you if that check was drawn by Frank Stunenberg and endorsed by you, and did you receive that amount of money on it?

A. Yes.

Q. I show you a check dated February 13th, 1903, to the First National Bank of Boise, \$4,000, signed "Frank Stunenberg, Agent, account Kinkaid," and ask you if that is Frank Stunenberg's signature to that?

A. Yes, that is Frank Stunenberg's signature, but it is not to me.

(Deposition of John Kinkaid.)

Q. Yes, it was deposited to your credit in the First National Bank. And I show you also a check on the Commercial Bank of Caldwell, March 25th, 1903, to the order of First National Bank, Boise, \$1,200 signed "Frank Stunenberg personal account Kinkaid," and I ask you if that was signed by Frank Stunenberg and placed to your credit?

A. That is signed by Frank Stunenberg personally, and it was likely passed to my credit, I don't know.

Mr. GORDON.—I offer these three checks in evidence.

Q. What was Mr. Borah to give you for each claim; I understood you to say that he had nothing definite with you, but he would settle with you?

A. He paid me \$200 or \$300 for the claims and services in buying the claims that I got when he was furnishing the money.

Q. Do you remember on November 6th, 1903, Governor Stunenberg gave you a check for \$2,000 in part payment for five claims on Crooked river, or an advance on five claims on Crooked river?

A. What date was that?

Q. November 6th, 1903.

A. No, I don't; that Crooked river transaction should have been very nearly closed up at that time, if not entirely so; if there was a check of that kind.

Mr. GORDON.—That is all.

It is hereby stipulated that the signatures of the witnesses John I. Wells, Louis M. Pritchard and John Kinkaid are hereby waived subject to the right

of either party to recall the witnesses at the expense of the defendant Barber Lumber Company for the purpose of correcting any errors which counsel for the respective parties are unable to correct by agreement.

State of California,  
County of Los Angeles,—ss.

I, Cora E. Montgomery, a notary public in and for the County of Los Angeles, State of California, do hereby certify that the above and foregoing depositions of John I. Wells, Louis M. Pritchard and John Kinkaid, were taken before me on the 2d, 3d, 5th and 6th days of April, 1909, pursuant to stipulation of counsel for the respective parties above set forth; that such depositions were taken at the instance of the defendant Barber Lumber Company for use in the cause entitled United States of America, Complainant, versus Barber Lumber Company, and others, defendants, now pending in the Circuit Court of the United States for the District of Idaho; and that counsel for the respective parties waived the signature of the witnesses of their respective depositions by a stipulation set forth.

[Seal]                      CORA E. MONTGOMERY,  
Notary Public in and for the County of Los Angeles,  
State of California.

[Endorsed]: Filed June 19, 1909. A. L. Richardson, Clerk.

*In the Circuit Court for the District of Idaho.*

UNITED STATES OF AMERICA,

Complainant,

vs.

BARBER LUMBER COMPANY et al.,

Defendants.

Appearances:

PEYTON GORDON, Esq., and CHARLES  
KEIGWIN, Esq., Counsel for Complainant.

C. T. BUNDY, Esq., and R. P. WILCOX, Esq.,  
Counsel for the Defendant, Barber Lumber  
Company.

It is hereby stipulated and agreed, by and between the parties to the above-entitled action, by their respective counsel, that the depositions of James T. Barber, S. G. Moon, F. H. L. Cotten, and P. J. Cosgrove, may be taken in behalf of and at the request of the defendant Barber Lumber Company, before A. H. Shoemaker, Esq., a notary public in and for Eau Claire County, Wisconsin, without notice; and that such depositions may be taken in shorthand by the said A. H. Shoemaker and by him transcribed in longhand or on typewriter, and that the signature of the various witnesses thereto be waived, subject to the right of either party to recall such witnesses, at the expense of the Barber Lumber Company, to correct any errors therein, which errors cannot be corrected by agreement of the parties.

It is further stipulated, that such depositions

when taken, transcribed and filed with the clerk of the said court, shall have the same force and effect as if taken before the regularly appointed examiner of said court:

It is further stipulated, that the deposition of Dr. John Watson, taken before John J. Sly, a notary public at Buffalo, New York, when filed with the clerk of said court shall be used with the same force and effect as if said deposition had been taken before the duly appointed examiner of said court on due notice.

**[Deposition of James T. Barber, on Behalf of the Defendants.]**

JAMES T. BARBER, being first duly sworn, on oath, testified as follows, in answer to the following interrogatories put to him.

(By Mr. BUNDY.)

Q. Mr. Barber, you are the James T. Barber who is mentioned as a defendant in this action?

A. Yes, sir.

Q. In connection with the Barber Lumber Company, are you not?      A. Yes, sir.

Q. What is your present age?

A. Sixty-two.

Q. And where do you reside?

A. City of Eau Claire, Wisconsin.

Q. And what is your business?

A. Lumber business.

Q. For how many years have you resided in Eau Claire?      A. Twenty-three years.

Q. And where did you reside prior to that time?

A. Hannibal, Missouri.



(Deposition of James T. Barber.)

Q. Will you state, Mr. Barber, in your own way, your connection with the lumber business here and elsewhere, from the beginning up to date?

A. I have been advertised from *one of* the country to the other as a millionaire lumberman of Wisconsin. I would like to correct that impression so far as I can in connection with this case. I am not a millionaire lumberman. I am only interested in a comparatively small way in two local lumber companies. My entire holding of stock being less than three hundred shares, of a hundred dollars par value. I went to work for the Northwestern Lumber Company in 1875,—

Q. That is a Company of this city?

A. Yes, sir; that is the Company I am now connected with, as a bookkeeper.

Q. Go on Mr. Barber.

A. At Hannibal, Missouri. I continued in the employ of the Company in a subordinate position at Hannibal, until 1886. At that time I was permitted to buy a little of the stock of the Company on credit. At the end of the year 1886, the Northwestern Lumber Company closed its business operations in Missouri, and I was transferred to Eau Claire. I became the assistant of the then president, Mr. D. R. Moon, and was very closely associated with him until his death in 1898. I became very much attached to him, and after his death I felt very much like being of all the service I could to the widow and children, there being some five children here. Just wait a minute until I get the children right. How many

(Deposition of James T. Barber.)

children are there Jack? Seven children.

Q. At that time what position did you hold with the Northwestern Lumber Company, at the time that Mr. Moon died? A. I was vice-president.

Q. Who was president?

A. Mr. D. R. Moon. At the time Mr. Moon died, the other principal stockholder lived at Minneapolis.

Q. Mr. S. T. McKnight?

A. Yes, Mr. S. T. McKnight.

Q. Now, at or a short time prior to Mr. Moon's death what, if any, change was made in your relations with the Northwestern Lumber Company?

A. Prior to Mr. Moon's death?

Q. Yes; did you acquire some stock in the company at that time?

A. I acquired it before that; in 1886 I bought some stock on credit. After Mr. Moon's death the Northwestern Lumber Company found it necessary to begin curtailing its operations on account of the impossibility of obtaining the necessary supply of timber, and we began looking around for some operating plant in the west where a supply of timber could be secured and which would make a profitable use for the money left by Mr. Moon and possibly a profitable occupation for some of the boys.

Q. Now, with reference to looking up an operating plant, I will ask you as to whether you had any conversation with Mr. Carson or any other person connected or interested with you in this investigation?

A. Among the old pioneer concerns in this part

(Deposition of James T. Barber.)

of Wisconsin was the firm of Carson & Rand. Mr. Carson lived at Eau Galle, Wisconsin; afterwards, here in Eau Claire; and Mr. Rand lived at Burlington, Iowa. Mr. Carson's son, the Mr. Carson of the old firm of Carson & Rand; Mr. Carson was the father of the present William Carson and several daughters, among them, the wife of Mr. C. W. Lockwood, the treasurer of the Barber Lumber Company.

Q. Mr. William Carson is the present president of the Barber Lumber Company? A. Yes, sir.

Q. And Mr. Rand was the father of Horace S. Rand of Burlington, Iowa, who is also a stockholder in the Barber Lumber Company?

A. Yes, sir. In talking over plans for extending and continuing the lumber business for those of us who had been in it for many years, with Mr. Carson, he frequently expressed a desire or willingness, in the event we organized an operating, not a speculating plant, and we would take over the operations of it, to go in with us, join us in establishing that kind of an operation.

Q. Right there; I won't interrupt you very often, Mr. Barber; Mr. C. W. Lockwood and Mr. Carson both represented, did they not, the Carson estate which has been kept intact, has it not?

A. That is my information that the estate was incorporated. While Mr. Lockwood is a large stockholder in the Barber Lumber Company, both his and his—what I should say is that the individual holdings of Mr. Carson and Mr. Lockwood I know nothing about, but the impression prevails that it is

(Deposition of James T. Barber.)

the Carson estate.

Q. The present Horace S. Rand and the present William Carson have been intimately connected in various enterprises?

A. Yes, in Burlington, the same as their fathers were before them.

Q. Now, you have got up to the point, Mr. Barber, with reference to having some talk with Mr. Carson with reference to starting lumbering operations at some time, at some point in the west; I will ask you whether or not any definite place had been agreed upon in these talks with Mr. Carson?

A. None whatever. It was recognized, of course, that any large lumbering operations would necessarily be in the west, as there was no timber of any quantity to be obtained in this country.

Q. Before proceeding any further I want to take up these various defendants and others involved in this lawsuit; you know Albert E. Palmer?

A. Yes, sir.

Q. Just tell what he is and your connection with him prior to the timber operations in question.

A. Mr. Palmer came to work for the Northwestern Lumber Company; I can't give you the date.

Q. Here at Eau Claire?

A. Here at Eau Claire; but I should think it was sometime about 1890 or 1891 or 1892; I have not looked it up. Our records would, of course, show.

Q. In what capacity?

A. I think he started as an office boy; worked his way through the office force, became a bookkeeper

(Deposition of James T. Barber.)

and showed a great deal of ability. We always found him faithful and strictly honest, and he was in the employ of the Northwestern Lumber Company for quite a number of years.

Q. Where did he go when he left here at the time of the beginning of these operations in question?

A. He left the employ of the company and located at Spokane, Washington. He became a mining engineer and I have always understood, quite successful. He occasionally, in his mining operations would write us to know if we would take an interest in something of that kind. We wrote him that we were not looking for mining schemes at all, but if he ran across any good timber propositions, we would like to consider them.

Q. Do you recollect Mr. Palmer being here sometime in the summer of 1901 or latter part of 1901 with a mining proposition?

A. I remember he was here, and I think, with a mining proposition. It didn't interest me at all.

Q. Now, Mr. Barber, was Mr. Palmer hired by you to look up timber propositions, or just state what manner they came up?

A. We had no connection, no understanding, no arrangement with Mr. Palmer for doing anything for us other than as I said, we had written him that if he ran onto a good lumbering proposition, we would consider it.

Q. We will stop Mr. Palmer for the time being and take up Mr. Horace S. Rand, named as a defendant here; that is the Horace S. Rand you have



(Deposition of James T. Barber.)

told us about?           A. Yes.

Q. Mr. Lockwood, who is mentioned as one of the incorporators of the Barber Lumber Company, is the same Mr. Lockwood who is a brother-in-law of Mr. Carson and holding the stock of the Carson estate?           A. Yes, sir.

Q. And he is vice-president of the Eau Claire National Bank of this city?           A. Yes, sir.

Q. And has resided here a good many years?

A. Yes, sir.

Q. A neighbor of yours?           A. Yes, sir.

Q. And occupies the old Carson home in this city?           A. Yes, sir.

Q. Mr. Sumner G. Moon is one of the sons of Mr. D. R. Moon who was formerly president of the Northwestern Lumber Company?

A. Yes, sir.

Q. And one of the defendants named in this action?           A. Yes, sir.

Q. Did you ever know or see the defendant named William Sweet?           A. Yes, sir.

Q. Where did you see him and when; just in a general way; I don't care to go into the particulars?

A. I met him at Boise, Idaho. I could not give you the year, but think it was in 1905 or 1906; 1906, I guess.

Q. Did you ever have any business transactions with him at that time?           A. None whatever.

Q. Any business transactions with him at any time?           A. None whatever.

Q. Had you met him prior to that time?



(Deposition of James T. Barber.)

A. No, sir; wait a minute; I am all mixed up in this transaction; I am off; absolutely off; I never met Mr. Sweet.

Q. Never had any business transactions with him whatever? A. No, sir.

By Mr. GORDON.—Who is the gentleman you confounded him with?

(No answer.)

(By Mr. BUNDY.)

Q. So you never met Mr. Sweet in your life?

A. Never met Mr. Sweet.

Q. The defendant Louis M. Pritchard, did you ever meet him? A. No, sir.

Q. Ever have any correspondence with him?

A. None whatever.

Q. Mr. John Kinkaid, a defendant in this action; did you ever meet him? A. Yes, sir.

Q. Is that the gentleman you referred to?

A. Yes, sir.

Q. Where did you meet him? About when?

A. Oh, I couldn't tell; I couldn't give the dates.

Q. Well, with reference to the time you bought out the interest of Mr. Sweet; was it before or after that? A. After; a long time.

Q. Did you ever have any business relations with Mr. Kinkaid? A. None whatever.

Q. Did you ever write any letters to him or receive any from him? A. No, sir.

Q. Did you have any business transactions with him with reference to timber lands in Idaho or elsewhere? A. No, sir.

(Deposition of James T. Barber.)

Q. Now, Patrick H. Downs; do you know Mr. Downs?      A. Yes, sir.

Q. Did you ever have any business relations with him?      A. No, sir.

Q. Did you ever have any correspondence with him or from him?      A. No, sir.

Q. You may state briefly what your acquaintance with Mr. Downs consisted of.

A. I went to Idaho for the purpose of looking into the Barber Lumber Company's business and looking after timber lands, and Mr. Steunenberg had made arrangements for our convenience, it being necessary to drive all the way, and had secured the services of Mr. Downs as a driver and general pilot and guide to show us through the country.

Q. Can you tell approximately what year that was?      A. That was in 1902.

Q. Before or after you had purchased Mr. Sweet's interest?      A. After.

Q. Did you ever have any other business transactions with Mr. Downs other than riding in the team he drove?      A. No, sir.

Q. Now there is named in the complaint, although not a defendant, Frank Steunenberg; you were introduced to him by whom?

A. By a letter from Mr. Palmer.

Q. Now, we will drop that for the time being; now there is one other party named, John I. Wells; did you ever meet him?      A. Yes, once.

Q. Where did you meet him?

A. In Boise, Idaho.

(Deposition of James T. Barber.)

Q. Can you tell approximately what year?

A. I think it was in 1906.

Q. Prior to that time had you ever met the gentleman personally? A. No, sir.

Q. Did you at any time have any business relations with him? A. None whatever.

Q. Did you ever correspond with him or have any letters from him? A. No, sir.

Q. Now, Mr. Barber, prior to 1902, had you ever been in the State of Idaho, other than to go through it on the train? A. No, sir.

Q. Prior to 1902 had you any holdings or interests of any kind or character personally or otherwise in the State of Idaho, timbered portions?

A. Nothing other than an option to purchase some northern Idaho timber which I took from Governor Scofield; I think not.

Q. Were you in the State of Idaho at the time the option was taken? A. No, sir.

Q. Did the timber covered by the Scofield option extend in the Boise Basin? A. No, sir.

Q. How far from it?

A. Several hundred miles up in the Clear Water Country.

Q. The ex-governor Scofield you speak of was formerly the Governor of Wisconsin?

A. Yes, sir.

Q. With whom did you negotiate that option?

A. With Governor Scofield in Milwaukee.

Q. In this State? A. Yes, sir.

Q. That option was never exercised?

(Deposition of James T. Barber.)

A. No, sir.

Q. With the exception of holding an option on some of Governor Scofield's timber, had you personally or in a representative capacity, any timber holdings in the State of Idaho prior to the timber purchase from Sweet in 1902? A. No, sir.

Q. Had you any knowledge or information as to the existence of any timber in the Boise Basin or tributaries prior to 1902? A. No, sir.

Q. In your lumbering operations prior to the venture in Idaho, had you any experience, Mr. Barber, under the Stone and Timber Act, so-called?

A. No, sir; none whatever.

Q. Was the Stone and Timber Act ever in force in this State since you have been operating here?

A. Not to my knowledge.

Q. Did you ever acquire any lands in Idaho based upon the Stone and Timber Act? A. No, sir.

Q. During the early part, latter part of 1901, and the early part of 1902, I will ask you as to whether or not Mr. Palmer at various times brought to your attention timber propositions in the State of Idaho?

A. I remember only one proposition which was the Cameron Lumber Company located up on Coeur d'Alene Lake.

Q. Mr. Barber, calling your attention to this cabinet that is here in my office, lettered from A respectively down through the alphabet, I will ask you if that is the cabinet kept at your office containing the correspondence and files of the Barber Lumber Company? A. Yes, sir, it is.

(Deposition of James T. Barber.)

Q. And was sent down here for use in this trial at my request? A. Yes, sir.

Q. I will ask you, Mr. Palmer, if you did have correspondence with Mr. Palmer during the month of January and February and early part of 1902, in which he sought to interest you in the Cameron Lumber Company deal for one? And I think there is here one in another deal signed by W. C. Ufford and attached to it a letter from Mr. Palmer calling your attention to an opportunity to buy in?

A. Yes, sir.

Q. None of these lands have anything to do with the Barber Lumber Company's lands in the State?

A. Nothing whatever.

Q. And as a matter of fact, you turned down these propositions and had nothing to do with them?

A. No, sir.

Q. Now, Mr. Barber, I show you a letter marked in blue pencil 11½ and ask you if you know the handwriting of Albert E. Palmer, his signature, and if that is a letter from him?

A. I recognize the handwriting and signature of Mr. Palmer to the letter; it is a letter from him.

Q. Dated, February 21, 1902, and addressed to you at Eau Claire? A. Yes, sir.

By Mr. BUNDY.—I offer this letter in evidence and desire to read the parts that relate to the timber in controversy.

“Spokane, Washington, February 21, 1902.

J. T. Barber, Esq.,

Eau Claire, Wisconsin.

(Deposition of James T. Barber.)

Dear Mr. Barber: I mailed you to-day report Ex-governor Steunenberg, of Idaho, as sent to Mr. Campbell, Steunenberg will be here in a few days and Campbell is going to finance him because he has confidence in him. Campbell says if I want the deal he will turn the Governor over to me. He is no doubt a capable and reliable man. If you want to look into his scheme and will pay his expenses to Eau Claire and back, wire me, and I will have him go and see you. It is impossible for me to get anything desirable that does not require prompt action. If you do not wire me re this Steunenberg matter, the whole thing will be arranged here shortly after his arrival. His report explains itself. Mr. Campbell gave me this in confidence. If you want anything in Idaho these two propositions are worth your consideration.

Very truly,

A. E. PALMER.

P. S. I also enclose balance sheet Cameron Lumber Company. The timber charges shows the actual cost only.

A. E. PALMER.

Q. Mr. Barber, prior to the receipt of that letter, had you ever heard of any timber proposition in which Governor Steunenberg was interested?

A. No, sir.

Q. Had you ever known in any manner prior to this, of Governor Steunenberg's connection with any timber deal?

A. No, sir.

Q. Now, this letter refers to a report. Ex-gov-



(Deposition of James T. Barber.)

ernor Steunenbergh had sent to Campbell, have you made any effort to find that report and find where it is?

A. We have searched our office files and the whole office to find it, if possible.

Q. Have you any recollection what the report contained? A. No, sir.

Q. Do you remember in a general way what kind of a document it was; do you remember of seeing it?

A. No, sir.

Q. I will ask you as to whether or not you knew on receipt of this letter what timber it was, where it was located, that Governor Steunenbergh was interested in? A. No, sir.

Q. I show you another letter marked in blue pencil; you will have to keep your *specks* out right along; purporting to be sent by A. E. Palmer, from the files of the Barber Lumber Company; was that written and signed by Mr. Palmer?

A. It was.

Q. Was it addressed to and received by you?

A. It was.

By Mr. GORDON.—At or about that date? At or about that time, I assume, February 22, 1902?

A. Yes, sir.

By Mr. BUNDY.—I offer this letter in evidence and reads as follows:

“Spokane, Washington, February 22d, 1902.

J. T. Barber, Esq.,

Eau Claire, Wisconsin.

Dear Mr. Barber: About thirty thousand dollars’

(Deposition of James T. Barber.)

worth of timber has already been bought under Governor Steunenberg's plan and Mr. Campbell will likely make a pool of one hundred thousand dollars more to back the Governor, but he says I can have his place if I want it. Steunenberg wants to be carried for an interest, but I suppose you could have the whole deal after it is completed for a consideration. In the meantime Steunenberg's assistance would be worth a great deal to you.

Very truly yours,

A. E. PALMER."

By Mr. BUNDY.—I show you a letter-press copy book marked N. W. L. Co., Eau Claire, Wis., E, and at the bottom, "J. T. Barber" and ask you if that is a book kept by the Northwestern Lumber Company in the regular course of business, in which copies of correspondence was kept or supposed to be kept?

A. Yes, sir, it is such a book.

Q. I show you on page 567 of that book, a telegram copied, addressed to A. E. Palmer, of date, February 26, and ask you if you sent Mr. Palmer such a telegram in response to the two letters that have been offered in evidence? A. I did.

Q. We offer this in evidence.

"Eau Claire, February 26, 1902.

A. E. Palmer, Spokane, Washington.

Have Steunenberg come to Eau Claire at our expense. Answer.

J. T. BARBER."

Q. I show you two letters, marked number 14 and 15; particularly letter number 15 and ask you if

(Deposition of James T. Barber.)

that is a letter you received from Mr. Palmer at or about the date shown? A. Yes, sir.

Q. We offer the latter in evidence, number fifteen, which reads as follows:

“Spokane, Washington, February 27, 1902.

J. T. Barber,

Eau Claire, Wisconsin.

Dear Mr. Barber: Governor Steunenberg should reach Boise tonight when he should receive Mr. Campbell's wire asking him to return here preparatory to going to Eau Claire. Steunenberg put \$7500. into this deal since I wrote you, and Mr. Campbell let him have \$15000.00 more. I have no doubt but that he will come and see you.

Very truly,

A. E. PALMER.”

Q. I show you telegram on page 572; I show you letter-press copy of telegram in the letter-press book, and ask you if that is a telegram you sent to Mr. Palmer or a copy of one at or about that time?

A. Yes, sir.

Q. We offer it in evidence. It reads as follows:

“Eau Claire, Wisconsin, March 1, 1902.

A. E. Palmer, Spokane, Washington.

We have Scofield property option. Don't want Cameron. Time Too short. Get us out the best you can. We will not see you lose. Let Steunenberg come here.”

Q. I show you a telegram from files of Company marked No. 17; is that a telegram received from Mr.

(Deposition of James T. Barber.)

Palmer about the date shown?           A. Yes, sir.

By Mr. BUNDY.—That is offered in evidence.

“Spokane, Washington, March 1, 1902.

J. T. Barber, Eau Claire.

Cameron has option on all the N. P. lands tributary to Coeur d'Alene lake, Increases stumpage two millions. Option goes with Cameron deal. N. P. option strictly private. Do you still decline? Steunenberg here tomorrow.

A. E. PALMER.”

Q. Will you please explain what was meant by telegram No. 17 just offered in evidence? Particularly with reference to saying you would not see him lose?

A. Mr. Palmer was so imbued with the idea that the purchase of the Cameron Lumber Company was a good one, that he took in his own name, without consulting us, an option on the property, and paid, I think it was \$250.00 or \$300.00 for an option; and in turning it down we felt that he being enthusiastic in both services for us and putting up his own money, we would not see him lose anything, but we declined it.

Q. Nothing ever come of it?           A. No, sir.

Q. I show you a telegram taken from the files, dated sometime in March and on which there is a stamp marked “Answered, March 1, 1902” and “Received, March 1, 1902,” and ask you if that is a telegram received from Mr. Palmer on that day?

A. Yes, sir.

(Deposition of James T. Barber.)

By Mr. BUNDY.—I offer No. 18 in evidence which reads as follows:

“Spokane, Washington.

J. T. Barber, Eau Claire, Wisconsin.

Steunenberg left for Boise this morning. Campbell wired him come back. Should leave here Sunday.

A. E. PALMER.”

Q. Now, I show you a letter taken from the files, No. 22, and ask you if that is a letter received by you on March 6, 1902, from A. E. Palmer?

A. Yes, sir.

By Mr. BUNDY.—I offer the latter in evidence which reads as follows:

“Spokane, Washington, March 2, 1902.

J. T. Barber,

Eau Claire, Wisconsin.

Dear Mr. Barber: This will introduce to you Ex-governor Steunenberg of Idaho. You are already familiar with the object of his visit. He will explain details to you. There is no commission for anybody.

Very truly,

A. E. PALMER.”

Stamped with rubber stamp as follows: “Received March 6, 1902.”

Q. Mr. Barber is that stamp mark a method employed in your office to indicate the date on which letters are received? A. Yes, sir.

Q. And from that stamp mark you can tell when Mr. Steunenberg arrived here and presented that let-

(Deposition of James T. Barber.)

ter?            A. We received the letter March 6, 1902.

Q. And was presented to you personally by Ex-governor Steunenbergs was it not?

A. Yes, sir.

Q. Up to that time, March 6, 1902, had you ever met Governor Steunenbergs?            A. No, sir.

Q. Had you had any relations with him, or have any negotiations with him other than as shown by the correspondence between you and Mr. Palmer which is shown in evidence here?

A. None whatever.

Q. I show you a letter marked 23, taken from the files of the Company, and ask you if you received that letter on March 6, 1902?

A. Yes, sir.

By Mr. BUNDY.—We offer that letter in evidence.

“Spokane, Washington, March 2, 1902.

J. T. Barber,

Eau Claire, Wisconsin.

Dear Mr. Barber: Governor Steunenbergs leaves tonight for Eau Claire. Wish you would show him a little attention as he is quite a man. Mr. Campbell says he does not want anything out of the deal if you go into it, so there are no commissions to pay. Steunenbergs is familiar with the Scofield timber.

Think I will retain my option on the Cameron Lumber Company’s and interest somebody else in it.

Very truly,

A. E. PALMER.”



(Deposition of James T. Barber.)

Q. This letter 23 was evidently sent by mail to you and the other was presented by the Governor?

A. Yes, sir.

Q. Dated March 2d, received March 6th; now, Mr. Barber, we have traced this thing up to the time Mr. Steunenberg arrived at Eau Claire, on March 6th, and it appears he was to state the details of his proposition to you on his arriving; will you now state fully and in your own way, the proposition Mr. Steunenberg brought to you, representations he made, etc., going into it fully.

A. He stated that there was a tract of twenty-five thousand acres more or less of good timber in what was known as the Boise Basin, and that he, together with a person by the name of Sweet, had conceived the idea of establishing a lumber proposition; that timber and stone entrymen had made filings on quite a large amount of timber, made their final payments, and had final receiver's receipts, and that he and his partner had purchased several thousand acres of these lands; that numerous other filings had been made which Governor Steunenberg was satisfied could be purchased when the titles were perfected. We knew nothing about this timber and stone business, the legal situation of the timber and stone entrymen and we referred Mr. Steunenberg to our attorney, Mr. T. F. Frawley.

Q. Tell who Mr. Frawley was and his connection with this firm.

A. Mr. Frawley was the Northwestern Lumber Company's attorney, was connected with the firm,

(Deposition of James T. Barber.)

senior partner, of Frawley, Bundy and Wilcox, at that time. He has since died.

Q. Died June 30th, 1902?

A. Since this business. Mr. Steunenberg went on to state that his partner, Mr. Sweet, could not or would not furnish a sufficient amount of money to purchase the entire twenty-five thousand acres, and that any other smaller holding could not be profitably developed. He said that Mr. Sweet was willing to sell out on the basis of receiving the money back which he had paid for the lands purchased and incidental expenses, and fifty per cent profit. Up to this time we had always considered that in obtaining timber from the Government it was necessary in order to secure any quantity of it, to secure what is known commonly as "Lieu Lands Scrip." Now this is not scrip at all. It is the result of a provision of the law which enables the owner of land within the borders of a legally declared forest reserve to deed his land within the borders to the Government, and the Government in turn gives him the right to select any other Government lands in lieu thereof. It is simply a right to purchase land from the Government. At that time lieu land scrip as it was called, was worth from \$4.50 to \$5.50 an acre. We figured the thing over very carefully and we reached the conclusion that we could afford to pay Mr. Sweet his profit of 50%, purchase the additional filings when perfected, which Governor Steunenberg said could be done for about \$800.00 a claim, and bring the entire tract of about twenty-five thousand acres to a cost

(Deposition of James T. Barber.)

to us of about six dollars an acre, and as Governor Steunenberg had stated to us the land carried at least ten thousand to the acre, and it looked a good trade. Mr. Steunenberg came down here to Mr. Frawley's office.

Q. Before you leave that subject, Mr. Barber, now they had already several thousand acres and there were several thousand they could get, could buy; how did Governor Steunenberg plan to acquire the balance of the acres that he spoke of?

A. I should have mentioned that. He proposed that after purchasing from Sweet the lands he had already secured and purchasing from the entrymen the other lands already filed upon which the Governor said he could purchase when their filings were perfected, we propose to use our Lieu Land scrip on the basis of the prices per acre that I named for the rest of the land, and in that way we reached the result of not to exceed six dollars an acre. Mr. Frawley advised the Steunenberg and Sweet purchases of the timber and stone entries were all right, and we closed an arrangement or made a contract with Governor Steunenberg whereby he agreed to furnish us with twenty-five thousand acres of this land at not exceeding six dollars an acre.

Q. This contract being prepared, you wrote—

A. I will come to that in a minute. On the 12th of March during the negotiations or talk with Governor Steunenberg I had wired Mr. Palmer asking him if he would act as treasurer or auditor to check over the titles and purchases of Sweet and after-

(Deposition of James T. Barber.)

wards of Steunenberg, and handle our money for us in the event we made the trade. Mr. Palmer wired back that he would. The contract was drawn up ready for execution in the event Mr. Palmer found, on investigation, that the representations made were correct. On March the 12th, I took a train for the east on a vacation and was taken sick at Old Point Comfort and didn't get back until the first of May, and practically settled any of the detail that I had to do with that part of the business.

Q. Mr. Barber, do you recollect that Mr. Steunenberg left here on the sixth and do you recall that he left here and went to Chicago for the purpose of making arrangements with Sweet if possible, and then returned here again?

A. He went to Chicago after having had the first talk with us for the purpose of seeing or meeting Sweet, and then returned on the 12th from Chicago.

Q. That contract that you had agreed upon was not finally signed until the time when Mr. Palmer, acting as you have stated, as auditor, had looked over and approved the proposition?

A. It was not executed until that time; it may have been signed, but was not delivered to Steunenberg; we were holding the contract; I don't remember about that. There is one thing I should have possibly said, that is, that this contract and all the correspondence was with Barber and Moon, the Barber Lumber Company not having been considered at that time. And after this contract was delivered and Mr. Palmer had made his investigations, the

(Deposition of James T. Barber.)

whole plan was shown to Mr. William Carson and he signified his intention or willingness to join us in making the purchase.

Q. I show you letter-press copy of telegram on page 586 of the Northwestern Lumber Company's book, and ask you if that is a telegram you sent while Governor Steunenberg was here and during the negotiations with him? A. Yes, sir, it is.

By Mr. BUNDY.—We offer that in evidence, being number 26:

“Eau Claire, March 7, 1902.

A. E. Palmer, Spokane, Washington.

Will you serve as treasurer of corporation to develop Steunenberg scheme and be responsible for proper application of funds?

J. T. BARBER.”

Q. I show you telegram marked 27, from the files of the company and ask you if you received that in response to the telegram just read?

A. Yes.

By Mr. BUNDY.—I offer number 27 in evidence.

“Spokane, Washington, March 7, 1902.

J. T. Barber, Eau Claire, Wisconsin.

Yes.

A. E. PALMER.”

Q. That telegram was received by you, as indicated by mark, March 7, 1902?

A. Yes, same as date.

Q. Do you recall that during the negotiations with Mr. Steunenberg here at Eau Claire the question arose as to the practicability of driving that



(Deposition of James T. Barber.)

stream out there?           A. Yes, sir.

Q. I will ask you as to whether or not you telegraphed Mr. Palmer with reference to that, on that same date, March 7th?           A. Yes, sir.

Q. And is the telegram on page 588 of the letter-press book a copy of the telegram so sent?

A. Yes, sir.

By Mr. BUNDY.—We offer that telegram in evidence:

“Eau Claire, Wisconsin, March 7, 1902.

A. E. Palmer, Spokane, Washington.

Have trustworthy man ascertain if logs can be driven in large quantities from junction of Moores and Grimes creeks to Boise. Answer.

J. T. BARBER.”

Q. Was that telegram sent, Mr. Barber, for the purpose of proving or verifying some representations of Mr. Steunenberg as to the stream?

A. Yes, sir. Governor Steunenberg said that logs had been driven from the junction of Moores and Grimes Creeks which is at the edge of the basin.

Q. And so your decision to close the contract with Governor Steunenberg in a measure depended upon the drivability of the stream?

A. That cut quite a good deal of figure; if the timber was unavailable except by the construction of a railroad, it was practically valueless at that time.

Q. I show you a telegram number 29 and ask you if that is a telegram received by you from Mr. Palmer in response to telegram just read?

A. It is.



(Deposition of James T. Barber.)

By Mr. BUNDY.—We offer that in evidence:

“Spokane, Washington, March 7, 1902.

J. T. Barber, Eau Claire, Wisconsin.

Jim Maloney is here. Shall I send him to report on creeks?

A. E. PALMER.”

Q. Jim Maloney was a cruiser and timber man who lived in this part of the country?

A. Yes, he lived here, and I suppose he does now.

Q. Was Mr. Maloney out in that country in your interest? A. No, sir.

Q. Was he employed by you in any capacity?

A. No, sir. If you will bring out the relevancy of it I will say why.

Q. Mr. Maloney was an old timber cruiser around this country?

A. Yes, sir; estimator and cruiser that everybody in the business knew. Palmer knew I would know about who Maloney was as soon as he mentioned it.

Q. I show you letter-press copy of letter written by you to Palmer, page 589; that is a copy of a letter written and mailed by you at or about that time, is it? A. Yes, sir.

By Mr. BUNDY.—We offer that in evidence.

“Eau Claire, March 7, 1902.

A. E. Palmer, Spokane, Washington.

Dear Sir: Governor Steunenberg has been here for a couple of days and has gone on to Chicago to meet a Mr. Sweet who seems to have quite a large interest in the scheme the Governor is promoting. This proposition looks very fascinating to us and

(Deposition of James T. Barber.)

seems to hinge very largely on two vital questions. First. Can logs be transported at reasonable cost in large quantities from stump to Boise; and Second. Can we secure some local representative who will watch our interests and see that the money furnished by us is honestly applied to the purchase of good title to lands bearing timber as represented?

With this latter end in view, we wired you today as follows, 'Will you serve as treasurer of corporation to develop Steunenberg scheme and be responsible for proper application of funds.' We took this action after ascertaining that you have not yet arrived in St. Paul. Of course, if you are on your way east this correspondence is of no force.

Yours very truly,

J. T. BARBER, V. P.

Since writing above we have your answer 'Yes.' We know this is a nuisance to you and we certainly shall not expect you to help us without suitable compensation. We feel sure we can arrange to relieve you when we get the scheme to working if it goes through.

J. T. B."

Q. Did Mr. Palmer have any interest in the proposed contract you were discussing at that time, as an interested party?      A. No, sir.

Q. Was Mr. Palmer a salaried man of you or Mr. Moon or the Northwestern Lumber Company, at that time?      A. No, sir.

Q. Did you have any relations with him at all, Mr. Barber, except that you were drawing on him

(Deposition of James T. Barber.)

as a friend for services for which you expected to compensate him? A. No, sir.

Q. Was there any way to compensate him except as shown by that letter? A. No, sir.

Q. I mean at that time?

A. No, not at that time. I so understood the question.

Q. Now, Mr. Barber, Mr. Palmer was under some obligations to you people or Mr. Moon about mining ventures at that time?

A. I don't know anything about that; I had no interest in his mines; I knew nothing about them.

Q. I now show you a telegram from the letterpress copy book, dated March 8, No. 29 $\frac{1}{2}$ ; is that a copy of a telegram sent by you in response to inquiry made about Maloney? A. Yes, sir.

By Mr. BUNDY.—We offer that telegram in evidence, which reads as follows:

“Eau Claire, March 8, 1902.

A. E. Palmer,

Spokane, Washington.

Don't like Maloney, but presume action necessary.  
Do best you can.

J. T. BARBER.”

Q. I now show you telegram, marked 31; is that a telegram received by you from Palmer at or about that time? A. Yes, sir.

By Mr. BUNDY.—We offer it in evidence. It reads as follows:

(Deposition of James T. Barber.)

“Spokane, Washington, March 8, 1902.

J. T. Barber,

Eau Claire, Wisconsin.

Moore's Creek all right; Grimes creek drivable about three miles from mouth.

A. E. PALMER.”

Q. Go on and state what was meant by driving in this correspondence and why you wanted to find out about it.

A. Of course, the very cheapest way to drive saw logs, bring saw-logs from the timber to the sawmill, if the streams running in that direction are sufficiently large and under sufficient control as to water supply, is to float the saw-logs. The process of putting the saw-logs into the river when the water is at the right stage, putting the logs afloat, and floating them with the assistance of a large crew of men, about the river, is called, in the trade, driving saw-logs.

Q. Now, I show you a telegram marked 32; was that telegram received by you from Mr. Palmer?

A. Yes.

By Mr. BUNDY.—I offer it in evidence.

Spokane, Washington, March 8.

J. T. Barber,

Eau Claire, Wis.

Reputable party wires me large quantities have been driven down Moore's creek annually.

A. E. PALMER.”

Q. I now show you a telegram or two telegrams, marked respectively 33 and 34, and ask you if these

(Deposition of James T. Barber.)

are telegrams received by you from Mr. Palmer at or about the time of their date? A. Yes, sir.

By Mr. BUNDY.—Number 33 reads as follows:

“Spokane, Washington, March 8, 1902.

J. T. Barber,

Eau Claire, Wis.

Too little water Grimes creek; think Moore’s creek supply ample. Mail reliable information tonight; unnecessary me go Boise.

A. E. PALMER.”

Number 34 reads as follows:

“Spokane, Washington, March 8, 1902.

J. T. Barber,

Eau Claire, Wis.

I will leave Boise tomorrow night; will wire you as soon as possible.

A. E. PALMER.”

Q. I now show you a letter in the letter-press copy book, on page 600, being number 35; is that a copy of a letter you wrote Mr. Palmer on that date?

A. Yes, sir.

By Mr. BUNDY.—I offer that letter in evidence, which reads as follows:

“Eau Claire, March 8, 1902.

A. E. Palmer,

Spokane, Washington.

Dear Sir: In the last twenty-four hours our suspicions have been aroused that other parties are attempting to forestall Governor Steunenberg in obtaining the timber in the Boise Basin, and in order

(Deposition of James T. Barber.)

to protect him and possibly handle the situation ourselves, we have been trying to do business by telegraph. Hence, the dispatch to you asking you to send somebody who could be trusted to investigate the question of driving thirty to fifty millions of saw-logs per annum from the junction of Moore's and Grimes Creeks to Boise. Your reply came promptly that you could send Mr. Maloney of this city. We have wired you that prompt action being necessary for you to do the best you could.

We have heard nothing from the Governor who went to Chicago to meet his partner, Mr. Sweet.

J. T. BARBER."

Q. Now, from that letter, Mr. Barber, refreshing your recollection, can you state as to how long Mr. Steunenberg was here after his arrival on the 6th day of March?

A. Why, he was here the two days, the sixth and seventh, as I recollect it; and then went to Chicago the night of the seventh.

Q. To meet Mr. Sweet?

A. To meet Mr. Sweet.

Q. On page 601 I show you copy of telegram from yourself to Steunenberg; is that a copy of a message sent by you to him on that day? A. Yes, sir.

By Mr. BUNDY.—I offer that in evidence.

"Eau Claire, Wis. March 10, 1902.

Frank Steunenberg,

Ontario Hotel, Chicago, Ill.

When will you be here. We advise prompt action.

J. T. BARBER."



(Deposition of James T. Barber.)

Q. Now, in response to that telegram, he came back from Chicago here, did he not?

A. Yes, sir.

Q. And before you left here, and before he left here for good, the details of an arrangement between you and Mr. Moon, on the one part, and Mr. Steunenberg on the other part, was agreed upon at least, was it not?

A. Yes, sir.

Q. And this contract was finally signed and delivered and became operative after Mr. Palmer had made the investigation which he subsequently did make?

A. Yes, sir.

Q. I show you paper marked "Steunenberg Contract" purporting to be signed by Frank Steunenberg, J. T. Barber and S. G. Moon; what is the date of that?

A. March 12, 1902.

Q. That is the signature of the respective parties?

A. Yes, sir.

Q. And that is the contract you agreed upon when Mr. Steunenberg was here?

A. Yes, sir.

Q. And it was signed and became operative some time later?

A. Yes, sir.

By Mr. BUNDY.—We offer that contract in evidence. The contract reads as follows:

WHEREAS, Frank Steunenberg of the state of Idaho, hereinafter named party of the first part, has and does hereby represent to James T. Barber and S. G. Moon of the City of Eau Claire, Wisconsin, hereinafter named parties of the second part:

First: That there are situate along and adjacent to Grimes Creek and Moores Creek, in what is known

(Deposition of James T. Barber.)

as the Boise Basin in the southern part of Boise County in the State of Idaho, many thousands of acres of timber lands, upon which is standing and growing pine and fir timber which will average at least ten thousand feet of board measure to the acre, eight thousand feet of which is pine. That said lands are so situate that the said timber thereon may be practically handled and with great profit in logging and manufacturing the same into lumber, and that the title to said lands may be obtained within the next six months at a price not exceeding five and one-half dollars an acre.

Second: That heretofore the said party of the first part and one Sweet entered into, and now are engaged in the enterprise and venture of exploring said lands and obtaining title thereto, and have perfected the title to certain of said lands, and have invested therein a large sum of money. That the amount so advanced by said Sweet in furthering such enterprise and venture is substantially twenty-two thousand dollars (\$22,000). That the party of the first part and said Sweet are willing and desirous that said Sweet should assign and transfer all of his right, title and interest in and to the enterprise aforesaid, and in and to the lands and title thereto, so by him acquired therein, either separately or jointly with said party of the first part to said parties of the second part, for the amount by him actually invested therein, together with a profit or fifty per cent of the amount of said investment.

Third: That in the event that said parties of the

(Deposition of James T. Barber.)

second part purchase and acquire the interest of said Sweet in the enterprise aforesaid, and pay him therefor the amount of his actual investment, together with an addition of fifty per cent thereof, the said party of the first part can, and will acquire, by good and perfect title and have vested in the said parties of the second part, within six months from the date hereof, twenty-five thousand acres of land, with at least two hundred million feet, board measure, of merchantable pine and fir timber standing and growing thereon, of which timber at least eighty per cent is pine, in substantially a compact form, along and adjacent to the creeks aforesaid, and so situate as to be available for use in manufacture into lumber; the total price of said twenty-five thousand acres in the aggregate not to exceed the sum of one hundred and forty thousand dollars. And

WHEREAS, the said party of the first part is desirous of becoming and being interested in said lands and timber aforesaid, or in the stock of a corporation which may hereafter be organized to own, handle and control the said lands and timber aforesaid, and is willing and desirous of giving his best time and effort to procure the title to said lands to be vested in the parties of the second part, at the lowest and best attainable prices; and the said parties of the second part being willing to enter into an arrangement and agreement upon the representations aforesaid, the said parties hereto, for and in consideration of the benefit to accrue to each therefrom, and in consideration of the mutual agreements herein made, and for

(Deposition of James T. Barber.)

the sum of one dollar each to the other in hand paid, the receipt whereof is hereby acknowledged, have agreed, and do hereby agree, as follows:

First: That said party of the first part shall and will immediately procure, by good and sufficient conveyance, an assignment and transfer of all the right, title, interest and ownership of said Sweet in and to the venture and enterprise aforesaid, and due and sufficient conveyance of said lands and real estate aforesaid, to said parties of the second part for the actual and bona fide investment of said Sweet therein, together with a profit of an additional fifty per cent thereon, and which investment, at this time, said party of the first part agrees and undertakes, does not exceed the sum of twenty-two thousand dollars and the whole amount to be paid to said Sweet therefor not to exceed the sum of thirty-three thousand dollars; the precise and actual amount of said Sweet's investment in such venture and enterprise aforesaid to be vouched for, determined and audited by A. E. Palmer, of Spokane, State of Washington.

Second: Said party of the first part has agreed and does hereby agree that he will immediately select and locate said lands, so timbered as aforesaid and so situate upon said Grimes and Moore Creeks aforesaid, and shall and will cause good, perfect, indefeasible titles thereto to be vested in said parties of the second part and shall and will, within six months from this date, have so vested in said parties of the second part the title, so good, perfect, indefeasible as aforesaid, of at least twenty-five thousand acres

(Deposition of James T. Barber.)

of said lands, with at least two hundred million feet of standing merchantable pine and fir timber standing and situate thereon, of which timber at least eighty per cent thereof shall be pine, and the price thereof and to be paid therefor shall be the actual cost thereof, and shall not in any instance exceed six and one-half dollars an acre, and not to exceed in the aggregate one hundred and forty thousand dollars.

Third: The said party of the first part does hereby covenant and agree that the title of all lands acquired hereunder shall be good, perfect, and indefeasible where such title is or may be derived, or obtained from any person or source other than that acquired by or through the location of government scrip.

Fourth: And the said party of the first part does hereby promise and agree to pay to said party of the second part, on or before seven years from the date hereof, an amount, which with the sum heretofore advanced or which may *hereafter advanced* by him, shall amount to one-fourth of the total investment made hereunder, with interest at the rate of six per cent per annum, payable annually, on said sum so advanced by said parties of the second part for the party of the first part in pursuance hereof, such interest at the end of each year to be added and become part of the principal and bear interest at the rate aforesaid, provided that in the event that the property to be acquired hereunder shall be sold and disposed of by the parties hereto on or before the seven



(Deposition of James T. Barber.)

years aforesaid, then from the amount received upon such sale the parties of the second part may and shall retain the amount so owing them by said party of the first part with interest as aforesaid.

Fifth: Said parties of the second part agree that they will pay and advance the purchase price of the interest of said Sweet in and to said enterprise and venture aforesaid, which shall be the actual and bona fide investment of said Sweet therein, together with fifty per cent of said investment, and which amount shall be vouched for, ascertained and audited in and by said Palmer, as hereinbefore provided, and as and when all the right, title, interest and ownership of said Sweet in and to the venture and enterprise aforesaid and all his right, title and interest in said lands aforesaid, shall be deemed vested by good and sufficient conveyance in said parties of the second part.

Sixth: Said parties of the second part further agree that they will from time to time, as and when required, advance the necessary funds to purchase government scrip with which to obtain title to said lands and will, from time to time as and when required, upon the proper voucher being made therefor by said A. E. Palmer aforesaid, advance the necessary funds to acquire title to certain of said lands from other persons than the United States; provided that no funds shall be advanced herein except for actual investment in said lands and obtaining title thereto in the names of the said parties of the second part and that none of said lands, so acquired hereunder, shall cost to exceed six and a half dollars



(Deposition of James T. Barber.)

an acre and the whole of said purchase price, of the amount of twenty-five thousand acres, so timbered as aforesaid, shall not exceed in the aggregate, the sum of one hundred and forty thousand dollars.

Seventh: Said parties of the second part further agree that they will, when title is obtained hereunder to twenty-five thousand acres of said pine timber lands aforesaid, and may, at their option at any time prior thereto, cause a corporation to be organized under the laws of the State of Wisconsin with a capital stock which shall equal to the investment made in pursuance hereof in acquiring title to said lands, and they shall cause the title to all of said lands, so acquired hereunder to be duly vested in said corporation. They shall cause one fourth of the stock issued by said corporation to be set aside as the property, and for the benefit of said party of the first part, but to be held as collateral security by said parties of the second part for the moneys advanced hereunder for the benefit of said party of the first part, with interest as herein provided, and as security for all liabilities and agreements herein made and assumed by said party of the first part to said parties of the second part and for all liability and indebtedness of said party of the first part to such corporation.

Eighth: It is mutually understood and agreed by and between the parties hereto that in the event that the parties hereto shall not acquire under the terms of this contract, at least twenty-five thousand acres of land, with at least two hundred million feet of

(Deposition of James T. Barber.)

standing timber thereon as aforesaid, situate in said territory, within six months from this date, then the parties of the second part may, at their option, sell and dispose of all of the lands acquired by them in pursuance hereof, after giving the said parties of the first part six months' notice of their intention so to do, at the best and highest price that they may be able to receive therefor, keeping and retaining out of the moneys so received the whole of the moneys which they shall advance hereunder together with interest thereon on the several sums as and when advanced, at the rate of six per cent per annum, together with such other sums and amounts as may by said party of the first part be owing to said parties of the second part or to said corporation so to be formed as herein provided; and after paying such sum so advanced with interest as aforesaid if a sufficient sum be realized they shall pay to the party of the first part the amount which he has heretofore invested herein and which sum he may hereafter invest, together with interest thereon at the rate of six per cent per annum and in the event that there shall be any excess then three-fourths thereof shall be retained by the parties of the second part and one-fourth thereof to be paid unto said party of the first part.

Ninth: It is mutually understood and agreed by and between the parties hereto that in the event that the owners of the majority of the stock in said corporation shall determine to make improvements for the logging and handling of said timber, and to provide facilities for the manufacture thereof and addi-

(Deposition of James T. Barber.)

Equal funds be necessary therefor, then it shall be competent and proper for said corporation to do such things and the parties of the second part may, at their option, advance the money therefor as a loan or otherwise to said corporation, or may increase the capital stock of said company, as they may deem advisable, but in the event of so procuring such money for such extensions and additions to said business by increasing the capital stock in said company, the party of the first part shall have no interest in such additional stock, so to be issued, except that he may purchase the same at the time of the increase of such capital at the price paid by the other stockholders therefor, provided that at said time he shall have fully paid said parties of the second part all sums and amounts by him owing, or which he may owe to them or to said corporation at said time.

It is mutually understood and agreed by and between the parties hereto that all dividends may be declared by said corporation upon the stock of said party of the first part shall be applied in the payment of interest and principal of the amount which he may be indebted to said parties of the second part for loans and advances made to him, as herein provided and for such sums and amounts, as at the time of the declaring of any dividends may by him be owing to said parties of the second part, or to said corporation so to be formed as aforesaid.

It is mutually understood and agreed by and between the parties hereto that none of said parties shall have or receive any compensation for any work,

(Deposition of James T. Barber.)

labor or service, by either or any of them done or performed in acquiring title to any of the lands or real estate aforesaid.

It is further mutually understood and agreed, by and between the parties hereto, that said party of the first part shall not have or receive any pay or compensation for services heretofore rendered by him in advancing the venture and enterprise, as aforesaid, but he shall receive credit for the actual and bona fide sums and amounts heretofore, or which may hereafter be by him advanced in furthering such enterprise and venture, and which amounts, so heretofore by him advanced shall be ascertained and determined and vouched for by said A. E. Palmer, aforesaid.

It is further mutually understood and agreed that said parties of the second part shall, at their own cost and expense, pay for all services and expenses which may accrue to, or be owing to said Palmer for the performance of the services by him to be rendered as herein provided.

This agreement shall inure to and be binding upon the parties hereto, their heirs, executors, administrators and assigns.

IN WITNESS WHEREOF, the said parties hereto have interchangeably set their hands and seals this 12th day of March, 1902.

FRANK STEUNENBERG. [Seal]

JAMES T. BARBER. [Seal]

S. G. MOON. [Seal]

In presence of

\_\_\_\_\_  
\_\_\_\_\_.

(Deposition of James T. Barber.)

Q. That contract appears to be dated on the 12th day of March, 1902, Mr. Barber? A. Yes, sir.

Q. Now, that is the time you say you left on your vacation? A. Yes, sir.

Q. And took no further part in this matter until your return? A. No, sir.

Q. Until sometime in May; about the 1st of May, 1902, I think? A. Yes, sir.

Q. I ask you, Mr. Barber, if the arrangements you made with Mr. Steunenberg, and the contract as you construed it and understood it, contemplated the acquiring of the lands in the Boise Basin by the use of scrip other than the lands which had already been filed upon by the timber and stone entrymen at the time he was here?

A. That was the plan; yes, sir.

Q. Did you immediately upon the making of this contract, begin accumulating scrip for that purpose?

A. Yes, sir.

Q. Did you acquire scrip for that purpose?

A. Yes, sir.

Q. Do you know certain lands that were acquired by the Barber Lumber Company as the Crooked River Lands? A. Yes, sir.

Q. I will ask you whether or not the Crooked River Lands were referred to at all in the Steunenberg contract or prior to the making of it?

A. No, sir.

Q. Did you have any knowledge then of the Crooked River Lands at the time he was here and you made your arrangements with him?



(Deposition of James T. Barber.)

A. No, sir.

Q. Were they in contemplation of the parties at all at that time?      A. No, sir.

Q. The original plan then contemplated the lands here spoken of as the Basin Lands only?

A. Yes, sir.

Q. And comprising twenty-five thousand acres?

A. Yes, sir.

Q. The Barber Lumber Company has acquired since that time sixty-five or seventy thousand acres?

A. Yes, altogether.

Q. So the purchase of the property went beyond the scheme contemplated by Governor Steunenberg?

A. Yes, sir.

Q. What lands were talked over between you and Governor Steunenberg at and prior to the time of making this contract?

A. They were the lands that we commonly call Boise Basin lands; they were in the basin formed by the Moore's and Grimes Creeks and their tributaries running up in the mountains. Governor Steunenberg had said there were twenty-five thousand acres. It developed that there was a great deal more than that in the basin.

Q. You didn't acquire a great deal more than that from him?      A. Not from him.

Q. I think the total was about sixteen thousand from him?      A. Yes.

Q. I show you a letter-press copy of a letter found on page 661a of the letter-book produced, and ask you if that is a letter written by you to Mr. Palmer, or a



(Deposition of James T. Barber.)

copy of one, on or about that date?

A. Yes, sir.

By Mr. BUNDY.—I offer that letter in evidence.  
It reads:

“Eau Claire, May 21, 1902.

A. E. Palmer,

Spokane, Washington.

Dear sir: The delay in reaching a definite conclusion as to our action in the various matters connected with the Idaho timber was occasioned by negotiations being carried on with Mr. McKnight. These negotiations reached a climax a few days ago and we have purchased his interest in this company. This *evolves* the payment of a very large sum of money and will prevent us from seeking investment in western timber for sometime to come. For this reason we have decided that we will not enter into the option for the purchase of the Payette Valley timber. We will, however, continue our plans in the Boise Basin. We have now associated with us Mr. William Carson, of Burlington, Iowa, who, with Mr. Moon, will leave here for Boise in about two weeks. They will go over the ground thoroughly and settle any question of detail and policy which will come up at that time. We are now negotiating for a three thousand acre block of scrip available in that section of the country and would like to know if you can use this at once as we understand it must be located in one transaction. It is our idea to push the location of the timber lands in the basin as rapidly as it can be done intelligently, and with this in view, we hope

(Deposition of James T. Barber.)

to send you another estimate in a few days. We will inform you of leaving of Messrs. Carson and Moon. You would probably *prefer* to meet them at Boise. I return herewith enclosures contained in your letter of the 13th and give foregoing as the principal reason why we do not care to investigate the proposition submitted."

Q. Can you tell what proposition that referred to, Mr. Barber?

A. It referred to the purchase of a lot of timber along the Payette River which as I recollect it now, the title to which had been secured by parties from the Government and they were offering it for sale.

Q. Under the Timber and Stone Act?

A. Possibly a part of it; I think it was all timber and stone property. The Payette River is the first river directly west of the Boise Basin.

Q. In another basin?           A. Yes, sir.

Q. What is meant by pushing the location of timber lands and sending another cruiser for that purpose; state generally about this cruising.

A. As before stated here, we were planning all the time to file lieu land scrip upon all the lands which had not been filed upon under the Timber and Stone Act. In order to be able to place our scrip intelligently, of course, it was necessary for us to cruise the lands, look them over carefully, estimate the timber, and determine what subdivisions it would be worth while to put scrip on and whether that would cover timber enough to warrant us in continuing. He was there to get scrip; to prevent timber and stone entries; we preferred to use the scrip.